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SUPREME COURT OF THE UNITED STATES.

No. 105.

JOHN BACON, ALEXANDER SYMINGTON, AND THOMAS ROBINS, COMPLAINANTS AND APPELLANTS,

VS.

VOLNEY E. HOWARD, APPELLEE.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF TEXAS.

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THE UNITED STATES OF AMERICA,
District of Texas, to wit:

At a special term of the District Court of the United States, having and exercising the powers and jurisdiction of a Circuit Court of the same, for the district of Texas, appointed by the honorable John C. Watrous, Judge of the said Court, held at the city of Galveston, on the first Monday of January, in the year of our Lord one thousand eight hundred and fifty-six: Present, the honorable John C. Watrous, Judge of said Court, Benjamin McCulloch, esquire, marshal, and James Love, esquire, clerk—

Among other, were the following proceedings, to wit:

JOHN BACON, ALEXANDER SYMINGTON, and THOMAS ROBINS,
vs.
VOLNEY E. HOWARD.

Be it remembered, that heretofore, to wit, on the twenty-second day of October, in the year of our Lord one thousand eight hundred and fifty, came John Bacon, Alexander Symington, and Thomas Robins, by Ebenezer Allen and William G. Hale, their solicitors, into said District Court here, and exhibited their bill of complaint against Volney E. Howard, in the words following, to wit:

Bill of Complaint.

DISTRICT COURT UNITED STATES, *District of Texas.* } In Chancery.

To the honorable John C. Watrous, Judge of the District Court of the United States, having and exercising the powers and jurisdiction of a Circuit Court of the same, for the district of Texas:

John Bacon, Alexander Symington, and Thomas Robins, of the city of Philadelphia, and State of Pennsylvania, and citizens of the said State of Pennsylvania, bring this their bill of complaint against Volney E. Howard, of the city of San Antonio, and State of Texas.

And thereupon, your orators complain and say, that heretofore, to wit, on the nineteenth day of October, A. D. 1840, at a term of the Circuit Court of the seventh judicial district of the State of Mississippi, held in and for the county of Hinds, in said State, on the third Monday of September, in the year aforesaid, and con-

tinuing to the day above mentioned, the Planters' Bank, of the State of Mississippi, recovered judgment against the said defendant, for the sum of three thousand four hundred and forty dollars, together with costs of suit, amounting to the further sum of twenty $\frac{75}{100}$ dollars, which said judgment is still in full force, unrecovered, and in no part satisfied. And thereafter, the said Planters' Bank transferred and assigned the said judgment to your petitioners; and after such transfer and assignment, and at the May term of the Circuit Court of the State of Mississippi, for Adams county, in said State, A. D. 1846, the charter of the said Planters' Bank was declared to be forfeited, and judgment of ouster and seizure of its franchises into the hands of the State was rendered in favor of said State against the said Bank.

And your orators further say, that they have frequently caused applications to be made to the said defendant, and notifications to be given to him, to pay them the said sums of money due by virtue of the judgment aforesaid, and the legal interest thereon, and have him so to do; and they had, in fact, well hoped that such their reasonable requests would have been complied with.

But now, so it is, may it please your honor, that the said defendant, wrongfully failing and refusing to pay the said sums and interest, or any part thereof, sometimes pretends that your orators are not entitled to the relief hereby prayed, but only to a portion of such relief; and at other times further pretends, that the said sums and interest have long since been fully paid and satisfied; the direct contrary whereof your orators charge to be true.

And your orators further say, that at the time of the passage of the act of the Congress of the Republic of Texas, approved June 28th, 1845, entitled "An act to prescribe the mode of authenticating foreign judgments, and to limit suits thereon," the defendant hereto resided and afterwards continued to reside at the city of San Antonio, in the said Republic, and your orators resided and afterwards continued to reside at the city of Philadelphia, in the State of Pennsylvania aforesaid, more than two thousand miles from the said city of San Antonio; and that your orators, to whom the said judgment was then assigned, could not, according to the regular course of the mails, and with any reasonable diligence, have learned the passage of the said act, and caused suit to be instituted upon said judgment in the Courts of the said Republic of Texas, within sixty days after the passage of said act.

All which actings, doings, refusals, and pretences, are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators in the premises. In tender consideration whereof, and forasmuch as your orators are remediless in and by the strict course of the common law, and cannot have adequate redress in a Court of equity—

To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief hereby prayed,

and may, upon his corporal oath, and according to the best and utmost of his knowledge, information, remembrance, and belief, full, true, direct, and perfect answer make to such of the interrogatories hereinafter numbered and set forth, as by the note hereunder written he is specially required to answer, that is to say—

1. Whether it is not true that a judgment was recovered against him by the Planters' Bank, of the State of Mississippi, at the time and for the amount before stated; and if nay, at what other time, and for what amount?

2. Whether it is not true that the charter of the Planters' Bank was forfeited, and judgment of ouster and seizure of its franchises rendered at the time and in the manner in this bill stated; and if nay, in what other manner, and at what other time?

And that the said defendant may be bound by all the proceedings in this cause, and may, by the final order and decree herein to be rendered, be required to pay to your orators the sums of money in this bill specified, together with the legal interest due and accruing thereon, from the time of the rendition of said judgment, and that such process may be directed to issue from this honorable Court as may be just and necessary to enforce the said decree, and that your orators may have such other, or further, or different relief as the nature of their case may require:

May it please your honor to grant unto your orators a writ of subpœna, in due form, directed to the said Volney E. Howard, and directing him, at the first Monday in December next ensuing, and under a certain pain therein to be limited, to appear before your honor in this honorable Court, and then and there full, true, direct, and perfect answer make to the said interrogatories, and further to stand to, abide, and perform such further order, direction, and decree herein as to your honor shall seem meet. And your orator will ever pray, &c.

"Full" erased before filing.

EBN. ALLEN & WM. G. HALE,
Of Counsel for Compl'ts.

Galveston, Oct. 2, 1850.

NOTE.—The defendant is required to answer the two interrogatories, numbered 1 and 2, in this bill contained.

EBN. ALLEN & WM. G. HALE,
Of Counsel for Compl'ts.

Afterwards, to wit, on the twenty-second day of October, in the year of our Lord one thousand eight hundred and fifty, a subpœna was issued from the said Court, in the words following, to wit:

Subpœna.

UNITED STATES OF AMERICA,
District of Texas.

The President of the United States of America, to Volney E. Howard, greeting:

You are hereby commanded to appear personally before the honorable the United States District Court, exercising the powers and jurisdiction of a Circuit Court of the United States, at a Court to be holden in the city of Galveston, in and for said district, on the first Monday of December next, or whensoever the said Court shall there be, to answer a bill exhibited against you by John Bacon, Alexander Symington, and Thomas Robins, and to do further and receive what the said Court shall have considered in that behalf.

Witness, the Hon. John C. Watrous, Judge of said Court, and seal of Court, at the city of Galveston, this 22d day of [SEAL.] October, A. D. eighteen hundred and fifty, and 75th year of the independence of the United States of America.

JAMES LOVE, *Clerk.*

The defendant is required to enter his appearance in the above suit in the clerk's office on or before the first Monday of December next; otherwise the bill will be taken as confessed.

JAMES LOVE, *Clerk.*

Wherein the following return was made:

Return.

Received October 22d, 1850, and executed same day by serving the within-named defendant, Volney E. Howard, with a true copy of this subpœna and exhibiting to him this original.

J. BATES,
U. S. Marshal.
By J. B. BATES,
Deputy Marshal.

Afterwards, to wit, on the seventh day of July, in the year of our Lord one thousand eight hundred and fifty-one, the said defendant, Volney E. Howard, by Robert Hughes his solicitor, filed in the said Court here the following demurrer, to wit:

Demurrer.

The demurrer of Volney E. Howard, the defendant, to the bill

filed by John Bacon, Alexander Simington, and Thomas Robins, complainants:

This defendant, by protestation, not confessing all or any of the matters in and by said bill set forth and complained of to be true, in manner and form as the same are therein and thereby set forth and alleged, says, he is advised that there is no matter or thing in the complainants' said bill of complaint contained good and sufficient in law to call this defendant to account in this honorable Court for the same; but that there is good cause of demurrer thereunto, and he accordingly demurs thereto, and for causes of demurrer says:

1st. That the said complainants' said bill of complaint, in the case the same were true, which this defendant does in no wise admit, contains no matter upon which this Court can ground any decree or give the complainants any relief against this defendant.

2nd. The said complainants, by their said bill of complaint, shew a judgment rendered in the State of Mississippi more than seven years next before the filing of the said complainants' said bill in this Court, and do not at the same time shew a revival or renewal or new judgment rendered on said judgment, upon suit commenced, or scire facias issued within seven years next after the rendition of the judgment now sued on.

3rd. The complainants, by their own shewing, are barred by the first section of an act entitled "An act of limitations," approved February 5th, 1841.

4th. The said complainants, by their own shewing, are barred by the fourth section of an act entitled "An act to prescribe the mode of authenticating foreign judgments, and to limit suits thereon," approved January 28th, 1845.

5th. The said complainants, by their said bill of complaint, set out and sue upon, and ask a decree upon and by virtue of a judgment rendered against the defendant in a Court of Mississippi, on the 19th of October, 1840, and did not file their sd. bill herein until the 22nd day of October, 1850, more than ten years next after the said rendition of said judgment.

Wherefore, and for divers other defects in the complainants' bill of complaint contained, and appearing in the face thereof, this defendant demurs in law thereto, and craves the judgment of the Court whether he be compelled or should make any further answer thereto; and prays to be hence dismissed with his reasonable costs in this behalf expended, &c.

ROB. HUGHES,
For defendant.

I certify in my opinion the foregoing demurrer is well founded in point of law.

ROB. HUGHES,

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

Volney E. Howard this day personally appeared before the undersigned, commissioner of affidavits, and made oath in due form that the foregoing demurrer is not interposed for delay.

VOLNEY E. HOWARD.

Sworn and subscribed, 23rd October, A. D. 1850.

A. M. HUGHES,
Com'r.

Afterwards, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-one, an order was entered on the rule book in the Court here, setting down the demurrer to be heard, which order is in the words following, to wit:

Order.

JOHN BACON and others
vs.
VOLNEY E. HOWARD. } 61.

The demurrer of the defendant to the bill of complaint is set for argument on the first day of the next term, or as soon thereafter as counsel can be heard.

ALLEN & HALE,
Sol'rs. for Compl'ts.

Afterwards, to wit, on the eleventh day of March, in the year of our Lord one thousand eight hundred and fifty-six, the Court here passed the following decree:

Decree.

BACON et als.
vs.
VOLNEY E. HOWARD.

This day the demurrer of the defendant to the complainants' bill of complaint came on, and was argued; and the Court being now sufficiently advised, it is ordered, adjudged, and decreed, that the said demurrer be allowed, and the complainants' bill be dismissed. It is further ordered, adjudged, and decreed, that the defendant recover of the complainants his costs about his defence in this behalf expended.

Afterwards, to wit, on the twelfth day of March, in the year of our Lord one thousand eight hundred and fifty-six, the Court here passed the following order, approving the appeal bond tendered by complainants.

Bacon et al. vs. *Howard.*

Order.

JOHN BACON et als.
vs.
VOLNEY E. HOWARD.

This day the parties appeared by their counsel; and the complainants, in open Court, and in presence of the solicitor and counsel of the defendant, showed to the Court that the value of the matter in controversy exceeded the sum of two thousand dollars, and prayed an appeal from the final decree to the Supreme Court of the United States, at the next term thereof, to be holden at Washington, on the first Monday of December next, and offered an appeal bond in proper form, which was thereupon approved by the Court and filed, and the appeal was accordingly allowed to act as a supersedeas herein.

Afterwards, to wit, on the day and year aforesaid, the said complainants, by Ebenezer Allen and William G. Hale, their solicitors in this cause, filed in the said Court here the following appeal bond, to wit:

Appeal bond.

Know all men by these presents, that we, John Bacon, Alexander Symington, and Thomas Robbins, of the city of Philadelphia and State of Pennsylvania, and are held and firmly bound unto Volney E. Howard, in the full and just sum of two hundred dollars, to be paid to the said Volney E. Howard, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this eleventh day of March, in the year of our Lord one thousand eight hundred and fifty-six.

Whereas, lately, at a term of the District Court of the United States, for the district of Texas, in a cause or suit depending in the said Court, in chancery, between John Bacon, Alexander Symington, and Thomas Robbins, as complainants, and the said Volney E. Howard, as defendant, a decree was rendered against the said John Bacon, Alexander Symington, and Thomas Robbins—

Whereby their bill of complaint was dismissed with costs, and the said John Bacon, Alexander Symington, and Thomas Robbins have prayed and obtained an appeal from the said decree at the term at which the said decree was rendered, and in open Court, to the Supreme Court of the United States, at the next term thereof, to be holden at the city of Washington, on the first Monday of December next:

Now, the condition of the above obligation is such, that if the said John Bacon, Alexander Symington, and Thomas Robbins, shall prosecute their appeal to effect, and answer all damages and costs

if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

JOHN BACON, [SEAL.]
ALEXANDER SYMINGTON, [SEAL.]
THOMAS ROBBINS, [SEAL.]

The three above named by their solicitor, W. G. Hale.

WILLIAM G. HALE, [SEAL.]
EBENEZER ALLEN, [SEAL.]

Sealed and delivered in the presence of—
Jos. E. Love.
Approved by—
John Watrous.

In testimony that the foregoing is a true copy of the record and proceedings of the District Court aforesaid, in the said [SEAL.] cause, I hereunto subscribe my name, and affix the seal of the said District Court, this fourteenth day of March, in the year of Lord one thousand eight hundred and fifty-six.

JAMES LOVE,
Clerk.

SUPREME COURT OF THE UNITED STATES.

No. 106.

J. TEMPLE DOSWELL, PLAINTIFF IN ERROR,

v.

ENRIQUE DE LA LANZO ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF TEXAS.

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The United States of America.

United States District Court, District of Texas, at Galveston.

At a term of the District Court of the United States, having and ever using the powers and jurisdiction of a Circuit Court of the same, for the District of Texas, appointed by the Honorable John C. Watrous, Judge of said Court, held at the City of Galveston, on the first Monday of January, in the year of our Lord one thousand eight hundred and fifty-six, present the Honorable John Watrous, Judge of said Court, Joseph Bates, Esquire Marshal, and James Love, Clerk, among other, were the following proceedings, to wit:

J. TEMPLE DOSWELL
v.
ENRIQUE DE LA LAUZA et als.

Be it remembered, that heretofore, to wit, on the eighth day of October, in the year of our Lord one thousand eight hundred and forty-nine, came J. Temple Doswell, and filed his petition against Enrique de la Lauza et als., which said petition is in the words and of the tenor following, to wit:

Petition.

United States of America, District and State of Texas.

J. TEMPLE DOSWELL
v.
ENRIQUE DE LA LAUZA et als.
} Trespass to try Title.

To the Honorable John C. Watrous, Judge of the United States District Court, for the District and State of Texas.

The petition of J. Temple Doswell, a citizen of the State of Louisiana, and a resident of the City of New Orleans, against Enrique de la Lauza, Frederick Belden, James M. Manning, Ephraim M. Haines, J. Warren Kumig, Edward Fitz Gerald, Richard Power, John F. J. Mercitte, Festus Doyle, John Smith, Hiram Riggs, J. Benton Johnson, Conrad Muley, John A. F. Gravis, Harrison W. Berry, George Noesel, George Henaker, Charles Blackwell, Orris C. Rice, Charles G. Bryant, Nathaniel Chambbliss, Thomas Parker, Sarah Pettigrew, Michael McMahon, Matthew Dunn, Cornelius Cahill, John P. Kelsey, William Davis, John Stewart, Bivian Brooken, Margaret Crothers, John Martin Wisner, Lewis N. Drew, D. Munroe, Mattias Baltischiender, Sylvester Brown, John S. Owen, Henry Redmond, F. J. Swift, William Mann, Edward Ohler, and M. P. Norton, hereinafter styled defendants, each of whom is a citizen of the District and State of Texas, and a resident of the County of Nueces, would respectfully represent, that heretofore, to

wit, on the third day of October, A.D. 1849, your petitioner was seized and possessed, as in his demesne, of fee and right, of, in, and to a certain tract of two leagues of land, worth twenty-five thousand dollars, situated in Nueces County, in San Patricio District, the first of which two leagues is described as follows, to wit, as Survey No. 20, on the west side of the Nueces, in Corpus Christi Bay, surveyed by virtue of headright certificate No. 288, issued to Miguel Basquez, by the Board of Land Commissioners of Nacogdoches County, on the 17th day of February, 1838, and transferred to Levi Jones, on the sixth day of May, 1838; beginning at the north corner of Nathan H. Watrous, third of a league survey, No. 19, a stake and mound on the bank of the Bay. Thence with the meanders of the Bay north 36° west, five hundred varas; north 24° west, three hundred varas; north 19° west, five hundred varas; north 11½° west, four hundred and twenty-five varas; north 5½° west, five hundred and nine varas; north 16° west, five hundred and ninety-nine varas, to a stake and mound for a corner; thence south 45° west, ten thousand five hundred and fifty varas, to a stake from which a mosquit bears south 25° west, nine varas; another bears south 60° east, twenty-four varas; thence south 45° east, twenty-five hundred varas, to a stake and mound; thence north 45° east, nine thousand five hundred and thirty-six varas, to the place of beginning; and the second of which two leagues is described as follows, to wit, as survey No. 21, on the west side of Corpus Christi Bay, adjoining survey No. 20, surveyed by virtue of certificate No. 499, issued to K. H. Douglass, assignee of Jose Ma. Bargas, by the Board of Land Commissioners of Nacogdoches County, on the first day of April, 1838, and by him transferred to Levi Jones, on the 6th day of May, 1838. Beginning at a stake and mound on the bank of the Bay, the north corner of said survey No. 20, thence with the meanders of the Bay north 3° east, four hundred and eighty varas; north 14¼° west, one hundred and sixty varas; north, nine hundred and sixty varas; north 17¾° east, seven hundred and forty-two varas; north 26½° east, eight hundred varas; north 33° east, twelve hundred and fifty-eight varas; north 26½° east, two hundred and ten varas; north 9½° east, one hundred and seventy varas; north 63° west, four hundred and eighty-two five-tenths varas, to a stake and mound on the eastern point of the Oyster Reef; thence south 45° west, two thousand two hundred and forty-seven and six-tenths varas; thence south three hundred and sixty and three-tenths varas; south 15½° east, one hundred and fifteen varas; south 57° west, two hundred and eighty varas; south 24¾° west, three hundred and ten varas; south 79° west, seven hundred and forty-eight varas; north 87½° west, three hundred and forty-five varas; north 58° west, one hundred varas, to a stake, from which a mosquit, blazed and marked J, bears south 58° east, one hundred varas; thence south 45° west, seven thousand eight hundred and seventy varas, to a stake, from which a mosquit, four inches dia., bears south

25° west, twenty varas; another bears south 50° west, fourteen varas; thence south 45° east, two thousand and five hundred varas, to a stake, from which a mosquit, six inches dia., north 36° west, twenty-five varas; thence north 45° east, eight thousand and seventy varas, to the place of beginning.

And your petitioner further avers, that afterwards, to wit, on the fourth day of October, A. D. 1849, the said defendants, and each of them, with force and arms, &c., entered upon the one-fourth part of said two leagues—the said fourth being contiguous to and bounded by lines parallel with the surveys of said two leagues, being the front fourth bounding on Corpus Christi Bay—and ejected your petitioner from his said land, leaving him in peaceable possession of only three-fourths thereof—the said three-fourths being cut off from all connection with said Bay—and cut away the timber from said fourth, and trampled down the grass thereon, and other wrongs and injuries did to your petitioner, against the peace of the State, and to the damage of your petitioner of the sum of twenty-five thousand dollars.

Wherefore, in consideration of the premises, your petitioner prays that said defendants, and each of them, may be cited to appear at the next term of this Honorable Court, and to answer this petition, and that he may have judgment against them, and each of them, for his afore-described land, and for his damages aforesaid, costs, &c.

ALEXANDER,
Of the Attorneys p. q.

And afterwards, to wit, on the fifth day of December, in the year of our Lord one thousand eight hundred and forty-nine, came the defendants hereinafter named, by Robert Hughes, Esquire, their attorney, and filed their answer, which is in the words and of the tenor following, to wit:

Answer.

The United States of America, District of Texas, to wit: District Court, December Term, 1849.

J. Temple Doswell
v.
Enrique de la Lauza et als.
} Trespass to try title to lands.

And the defendants, except John Stewart, Bivian Brooken, William Davis, D. Munroe, John S. Owen, and George Henaker, by attorney, come and defend the wrong and injury, when, &c., and for answer to plaintiff's petition, come and say, *actio non*, because they say they are not guilty of the trespass in said petition supposed. And of this they put themselves upon the country.

And for further answer in this behalf said defendants say, *actio non*, because they say, the allegations in the plaintiff's petition set out,

and each and every of said allegations, are untrue. And of this they put themselves upon the country.

HUGHES, BUTLER, & MERRIMAN,
For said Defendants.

And afterwards, to wit, on the 24th day of January, of the year of our Lord one thousand eight hundred and fifty, the Court here made an order in this cause, which is in the words and of the tenor following, to wit:

Order.

J. TEMPLE DOSWELL
v.
ENRIQUE DE LA LAUZA & Others.

Continued by consent.

And afterwards, to wit, on the sixteenth day of April of the same year, the Court here made an order in this cause, which is of the words and in the tenor following, to wit:

Order.

J. T. DOSWELL
v.
DE LA LAUZA et als.

Continued.

And afterwards, to wit, on the tenth day of December, of the same year, the Court here made an order in this cause, which is in the words and of the tenor following, to wit:

Order.

J. TEMPLE DOSWELL
v.
ENRIQUE DE LA LAUZA et als.

Continued.

And afterwards, to wit, on the nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-one, the Court here made an order in this cause, which is in the words and of the tenor following; that is to say:

Order.

J. TEMPLE DOSWELL
v.
ENRIQUE DE LA LAUZA et als.

Continued.

And afterwards, to wit, on the third day of July, in the year of our Lord one thousand eight hundred and fifty-one, the Court here made an order in this cause, which is in the words, and of the tenor following, to wit:

Order.

J. TEMPLE DOSWELL
v.
ENRIQUE DE LA LAUZA et als. } 284.

Upon the motion *ore tenus* of the counsel for the plaintiffs in this case, and it being agreed to by the counsel for the parties, that the affidavit of William G. Hall, annexed to a like motion in the case of J. T. Doswell against Henry L. Kinney, should be considered as made also in this case: It is now ordered by the court, that either party have leave to take out letters rogatory, addressed to any tribunal or judge having jurisdiction in civil causes in the States of Tamaulipas, Coahuila, Nuevo Leon, and the Federal District of Mexico, in the form and under the regulations prescribed in the case of Rafael Garcia Curazos, et als., against Simon Massina, pending in this court.

And afterwards, to wit, on the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and fifty-three, the Court here made an order in this cause, which is in the words and of the tenor following, to wit:

Order.

J. TEMPLE DOSWELL
v.
ENRIQUE DE LA LAUZA et als. } 234.

Ordered, that this cause be continued.

And afterwards, to wit, on the eleventh day of March, in the year of our Lord one thousand eight hundred and fifty-four, the Court here made an order in this cause, which is in the words and of the tenor following, to wit:

Order.

J. TEMPLE DOSWELL
v.
ENRIQUE DE LA LAUZA et als. } 234.

By consent of parties, it is ordered that this cause be continued.

And afterwards, to wit, on the sixth day of February, in the year of our Lord one thousand eight hundred and fifty-six, came the defendants, and filed their amended answer, which is in the words and of the tenor following, to wit:

Amended Answer of Defendants.

The United States of America, District of Texas, to wit:

District Court at Galveston, January Term, 1856.

J. TEMPLE DOSWELL
v.
ENRIQUE DE DA LAUZA et als. } 234. Trespass to try title to lands.

1. And now come the defendants, who have entered their appearance, and who have answered the plaintiff's petition herein, by their attorney, and by leave of the Court, first had and obtained, by way of amendment to their answer heretofore filed, say *actio non*, because they say that a certain Enrique Villareal had and held continuous, uninterrupted, and adverse possession of the land and premises in the plaintiff's petition mentioned, from the 16th day of November, A. D. 1831, up to and until the 16th day of June, A. D. 1842, a period of more than ten years, by virtue of a just title, in good faith; and this they are ready to verify. Wherefore they pray judgment, &c.

2. And for further answer in this behalf, said defendants say *actio non*, because they say, that on the 14th and 15th day of January, 1838, the time when the right of those under whom the plaintiff's claims first accrued to the land in this plaintiff's petition described, a certain Enrique Villarreal then had peaceable and adverse possession of the said land in the said petition mentioned and described, under and by virtue of a just title, in good faith; and from thenceforward, up to and until the 16th day of March, A. D. 1840, he had and held said peaceable, adverse, and uninterrupted possession under a just title, in good faith, as aforesaid, and continued said peaceable, adverse, and uninterrupted possession under a just title, and in good faith, as aforesaid, from the said 16th day of March, 1840, as aforesaid, up to and until the 17th day of March, 1841, had and held adverse, peaceable, and uninterrupted possession of the said land, and the said plaintiff made no entry upon and into said land, or commenced any action to recover the same, or to try title thereto, before or upon the said 16th day of June, 1842. And the said defendants further aver, that on the said 16th day of June, A. D. 1842, a certain Henry L. Kinney, claiming and holding under the said Enrique Villarreal, secured the seizin and possession of, in, and to said land in said petition mentioned, from the said Villarreal, and has ever since and up to the time of the commencement of the plaintiff's action herein, remained in the peaceable, adverse, and uninterrupted possession of the same, without entry thereon, or action by said plaintiff, or those under whom he claims; and this they are ready to verify. Wherefore they pray judgment, &c.

3. And the said defendants, for further answer herein, as aforesaid, by leave of the Court, first had and obtained, say *actio non*, because they say that a certain Enrique Villarreal, and those claiming and holding under him, had and held adverse, peaceable, con-

tinuous, and uninterrupted possession, by virtue of a just title, in good faith, of the land and premises in the plaintiff's petition described, from the 14th and 15th days of April, A. D. 1838, up to and until the 17th day of March, 1841; and that the said Enrique Villareal, and those claiming and holding under him, on the 17th day of March, 1841, and from thence forward, up to and until the day of the commencement of the said plaintiff's action herein, had and held peaceable, continuous, uninterrupted, and peaceable possession of the said land and premises in said petition mentioned and described; and this they are ready to verify. Wherefore they pray judgment, &c.

4. And for further answer in this behalf, by leave of the Court, first had and obtained, the said defendants, by their attorney, say *actio non*, because they say the said plaintiff's right was destroyed before the commencement of the action herein, by the law of prescription of ten years, by possession had and continued under a just title, in good faith, under the law in force and operation prior to the sixteenth day of March, 1840, and by a continuous, adverse, peaceable, and uninterrupted possession under and by virtue of the 14th section of the Act of Limitations of 1841, all had and held by a certain Enrique Villarreal, and those claiming and holding under him; and this they are ready to verify. Wherefore they pray judgment, &c.

5. And for further answer in this behalf, by leave of the Court first had and obtained, the said defendants, by their attorney, say *actio non*, because they say that the said Henry L. Kinney at the time of the commencement of the plaintiff's action herein had *had* peaceable, continuous, adverse, and uninterrupted previous possession of the land and premises in the plaintiff's petition described, for more than three years, under color of title; and that said plaintiff did not commence his said action within three years next after his cause of action accrued, and this they are ready to verify, wherefore they pray judgment, &c.

ROB. HUGHES,
For Defendants.

6. And for further answer in this behalf, by leave of the court first had and obtained, said defendants, by attorney, say *actio non*, because they say that each of said defendants, and those, him or them under whom they claim title, had and held adverse, peaceable, continuous, and uninterrupted possession of the land and premises in the petition mentioned, for more than three years before the commencement of plaintiff's action, under color of title; and this they are ready to verify. Wherefore they pray judgment, &c.

ROB. HUGHES,
For Defendants.

And afterwards, to wit, on the same day and year, the court here

made an order in this cause, which is of the words, and in the tenor following; that is to say:

Order.

J. TEMPLE DOSWELL
v.
ENRIQUE DE LA LAUZA et als. } 234.

This day came the parties by their attorneys, and the plaintiff discontinued his suit as against Ephraim M. Haines, Edward Fitzgerald, John Stewart, Bivian Brooken, William Davis, D. Munroe, John S. Owen, George Henaker, John Smith, John Martin Wisner, and Hiram Riggs; and suggested the death of J. Warren Kinney, Charles G. Bryant, F. J. Swift, John F. J. Gravis, and William Mann, former defendants herein, and also suggested to the court, that Bryant is the widow, and Charles C. Bryant is the heir of Charles G. Bryant, deceased. Swift is the administratrix and widow of the said F. J. Swift, deceased. J. E. Gravis is the administratrix and widow of said John F. J. Gravis, deceased. And E. Mann, is the administratrix and widow of the said William Mann, deceased. Whereupon it is ordered, that proper writs of scire facias issue to said administrators and heirs to revive this suit; and thereupon came the said administrators and heirs aforenamed, by their attorneys, and waived the issuance and service of said writs of scire facias, and entered their appearance hereto in order voluntarily to revive this suit, and adopted and revived in their own names, the answer and amended answer filed on the part of the original defendants; to all of which the plaintiff, by his attorney, assented. Whereupon, it is considered by the court, that this action be dismissed as to Ephraim M. Haines, Edward Fitzgerald, John Stewart, Bivian Brooken, William Davis, D. Munroe, John S. Owen, George Henaker, John Smith, John Martin Wisner, and Hiram Riggs; and revived as to the said administrators, and heirs of J. Warren Kinney, Charles G. Bryant, F. J. Swift, John F. J. Gravis, and William Mann, former defendants herein.

And afterwards, to wit, on the same day and year, the plaintiff, by his attorney, filed his demurrer to the answer of the defendants, which is in the words and of the tenor following, to wit:

Demurrer.

District Court of the United States, District of Texas, at Galveston.

J. TEMPLE DOSWELL
v.
ENRIQUE DE LA LAUZA et als. }

And now comes the said plaintiff, by his attorneys, and as to the answer of the said defendants originally filed in this cause, says, that he takes issue with pleas therein pleaded.

And as to the amended answer of said defendants, the said plaintiff says as follows:

1. That he demurs and excepts specially to the first plea therein pleaded, and says that it is insufficient in law, because the allegations therein do not sufficiently show either a title by prescription, or a bar by limitation.

2. That he demurs and excepts specially to the second plea in said amended answer pleaded, and says that it is insufficient in law, because the allegations therein do not sufficiently show either a title by prescription, or a bar by limitation; and because they do not show a bar to this action against these defendants.

3. That he demurs and excepts specially to the third plea in said amended answer pleaded, and says that it is insufficient in law, because the allegations therein do not sufficiently show either a title by prescription or a bar by limitation; and because they do not show that this action is barred.

4. That he demurs and excepts specially to the fourth plea in said amended answer pleaded, and says that the same is not sufficient in law, because it does not show or set forth facts whereby a title by prescription or a bar by limitation could be created; and it does not show a bar to this action.

5. That he demurs and excepts specially to the fifth plea in said amended answer pleaded, and says that it is not sufficient in law, because the Henry L. Kinney therein named is not a defendant to this action, and the allegations in said plea contained do not show that the plaintiff's cause of action against the defendants hereto has been barred.

6. That he takes issue on the sixth plea in said amended answer pleaded.

ALLEN & HALE,
Attorneys for Plaintiff.

And afterwards, to wit, on the same day and year, the Court here made an order in this cause, which is in the words and of the tenor following, to wit:

Order.

J. TEMPLE DOSWELL
v.
ENRIQUE DE LA LAUZA et als. } 234.

This day came the parties, by their attorneys, and the plaintiff asked leave to amend his petition, which leave was granted; and the defendants asked leave to withdraw their amended answer heretofore filed, and file a new amended answer in its place, which leave was granted, and the said amended answer filed. And thereupon, the plaintiff having demurred to several of the pleas in said amended answer contained, and the said demurrers being argued, it seems to

the Court that the first and fourth pleas in said amended answer contained, are not sufficient in law to bar the plaintiff's action. Therefore it is considered by the Court that the said pleas be overruled and stricken out, and the plaintiff recover all costs from the defendants occasioned thereby. And it further seems to the Court that the said third and fifth pleas are sufficient in law to bar the plaintiff's action. Therefore it is considered by the Court that the demurrers thereto be overruled, and that the parties proceed to trial thereon, and that the defendants recover from the plaintiff all costs occasioned by said demurrers.

And afterwards, to wit, on the same day and year, the Court here made an order in this cause, which is in the words and of the tenor following, to wit:

Order.

J. TEMPLE DOSWELL
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This day came the parties by their attorneys, and announced themselves ready for trial, and thereupon came a jury of good and lawful men, viz.: Jacob Smith, Jabez E. Safford, John W. Goode, Henry Gardiner, Robert J. W. Reel, Absalom B. Tornell, Samuel S. Robinson, Isaac Naylor, James Wrigley, George C. Raines, William W. Styles, and Aaron Armstrong, who being duly selected, tried, and sworn well and truly to try the issue joined, on their oaths do say, "We, the jury, find for the defendants. James Wrigley, foreman." It is therefore considered by the court, that the defendants go hence without day, and recover of the plaintiff.

And afterwards, to wit, on the eleventh day of February, of the same year, the plaintiff, by his attorney, moved for a new trial in this, in the following words, to wit:

Motion.

District Court of the United States, District of Texas, at Galveston.

J. TEMPLE DOSWELL
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And now comes the said plaintiff, by his attorneys, and moves the court to grant him a new trial in said cause, for the following reasons.

First. The court erred in the instructions which it gave to the jury, and in refusing those asked by the plaintiff.

Second. The court erred in admitting the testimony to which exceptions were taken by the plaintiff.

Third. The verdict of the jury is contrary to law and to the evidence in the case.

ALLEN & HALE,
Attorneys for Plaintiff.

And afterwards, to wit, on the eleventh day of February, of the same year, came the plaintiff, by William G. Hale, Esquire, his attorney, and filed his Bill of Exceptions to the rulings of the court, in the words and tenor following, to wit:

Bill of Exceptions.

District Court of the United States, District of Texas, at Galveston.

J. TEMPLE DOSWELL
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Be it remembered, that on the trial of the above entitled cause, the plaintiff first gave in evidence, two patents from the State of Texas, in words and figures as follows, to wit:

No. 277, 1st class. A. Miguel Basquez. Vol. 8, 1 Lea.

In the name of the State of Texas.

To all to whom these presents shall come, know ye:

I, Geo. T. Wood, Governor of the State aforesaid, by virtue of the power vested in me by law, and in accordance with the laws of said State in such case made and provided, do by these presents grant to Levi Jones, assignee of Miguel Basquez, his heirs or assigns forever, one league of land, situated and described as follows, in San Patricio, known as Survey No. 20, on the west side of the Nueces, in Corpus Christi Bay, by virtue of Headright Certificate No. 288, issued to Miguel Basquez, by the Board of Land Commissioners of Nacogdoches County, on the 17th day of February, 1838, and transferred to Levi Jones on the 6th day of May, 1838. Beginning at the north corner of Nathan H. Watrous' third of a league, Survey No. 19, a stake and mound on the bank of the Bay. Thence with the meanders of the Bay north 36° west, five hundred varas; north 24° west, three hundred varas; north 19° west, five hundred varas; north 11½° west, four hundred and twenty-five varas; north 5½° west, five hundred and nine varas; north 16° west, five hundred and ninety-nine varas, to a stake and mound for corner. Thence south 45° west, ten thousand five hundred and fifty varas, to a stake from which a mosquite bears south 25° west, nine varas; another bears south 60° east, twenty-four varas; thence south 45° east, twenty-five hundred varas, to a stake and mound; thence north 45° east, nine thousand five hundred and thirty-six varas, to the place of beginning. Hereby relinquishing to him, the said Levi Jones, and his heirs or assigns forever, all the right and title in and to said land, heretofore held and possessed by the said State; and I do hereby issue this letter patent for the same.

In testimony whereof, I have caused the seal of the
[SEAL.] State to be affixed, as well as the seal of the Gene-
ral Land Office. Done at the City of Austin, on
[SEAL.] the tenth day of April, in the year of our Lord,
one thousand eight hundred and forty-nine.

GEO. T. WOOD,
Governor.

GEO. W. SMYTH,
Commissioner of the General Land Office.

B.

No. 276, 1st Class. Jose Ma. Bargas. Vol. 8, 1 Lea.

In the name of the State of Texas.

To all to whom these presents may come, know ye:

I, Geo. T. Wood, Governor of the State aforesaid, by virtue of the power vested in me by law, and in accordance with the laws of said State in such case made and provided, do by these presents grant to Levi Jones, assignee of Jose Ma. Bargas, his heirs or assigns forever, one league of land situated and described as follows: In San Patricio District, known as Survey No. 21, on the west side of Corpus Christi Bay, adjoining Survey No. 20, by virtue of Certificate No. 499, issued to K. H. Douglass, assignee of said Bargas, by the Board of Land Commissioners of Nacogdoches County, on the 1st day of April, 1838, and by him transferred to Levi Jones, on the 6th day of May, 1838. Beginning at a stake and mound on the bank of the bay, the north corner of said Survey No. 20, thence with the meanders of the bay, north 3° east, 480 varas; north 14¼° west, 160 varas; north 960 varas; north 17¾° east, 742 varas; north 26½° east, 800 varas; north 33° east, 1258 varas; north 26½° east, 210 varas; north 9½° east, 170 varas; north 63° west, 482 6/10 varas, to a stake and mound on the eastern point of the Oyster Reef; thence south 45° west, 2247 6/10 varas; thence south 360 3/10 varas; south 15½° east, 115 varas; south 57° west, 280 varas; south 24¾° west, 310 varas; south 79° west, 748 varas; north 87½° west, 345 varas; north 58° west, 100 varas, to a stake, from which a mosquit, blazed and marked J, bears south 58° east, 100 varas; thence south 45° west, 7870 varas, to a stake, from which a mosquit, 4 inches diameter, bears south 25° west, 20 varas; another bears south 50° west, 14 varas; thence south 45° east, 2500 varas, to a stake, from which a mosquit, 6 inches diameter, north 36° west, 25 varas; thence north 45° east, 8070 varas, to the place of beginning. Hereby relinquishing to him, the said Levi Jones, and his heirs or assigns forever, all the right and title in and to said land heretofore held and possessed by the said State. And I do hereby issue this letter patent for the same.

In testimony whereof, I have caused the seal of the State to be affixed, as well as the seal of the General Land Office. Done at the

tors,
what

at the

City of Austin on the tenth day of April, in the year of our Lord, one thousand eight hundred and forty-nine.

GEO. T. WOOD,
Governor.

GEO. W. SMYTH,
Commissioner of the General Land Office.

And the plaintiff also gave in evidence the copy of a map in the General Land Office hereinafter included.

[For map, marked (C), see original, page 32.]

GENERAL LAND OFFICE, AUSTIN, August 20th, 1851.

This is to certify that the above is a correct copy of a part of the map representing the former county of San Patricio (now San Patricio and Nueces District), on file in this office, known as Grammont's Map.

In testimony whereof, I hereunto set my hand, and affix the seal of said office, the day and date first above written.

GEO. W. SMITH,
Commissioner.

And the plaintiff also proved and gave in evidence the conveyance from Levi Jones to the plaintiff, which was as follows:

D.

State of Texas, County of Galveston.

This indenture, made this second day of October, A. D. one thousand eight hundred and forty-nine, between Levi Jones, of the county aforesaid, and J. Temple Doswell, of the City of New Orleans and State of Louisiana, witnesseth: that the said Jones, in consideration of the sum of twenty-one thousand two hundred and eighty-five dollars, to him in hand paid by the said Doswell, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, and conveyed, and by these presents does grant, bargain, sell, alien, and convey to the said Doswell, two certain leagues of land, lying and situated in San Patricio District, in the State of Texas, granted by said State of Texas to said Jones, as assignee of Jose M. Bargas, and Miguel Basquez, by two patents, bearing date on the tenth day of April, A. D. 1849, and numbered two hundred and seventy-six, and two hundred and seventy-seven (276 and 277), for a more full and particular description of which said lands, reference is hereby made to said patents.

To have and to hold the said two leagues of land, with all and singular the appurtenances and privileges thereunto belonging, or in any wise appertaining, to him, the said Doswell, his heirs or assigns forever: the said Levi Jones hereby binds himself, his heirs, executors, and administrators, against the claim or claims of any persons whatsoever, to warrant and forever defend.

In witness whereof, I, the said Levi Jones, have hereunto set my hand and affixed my scrawl seal, at the City of Galveston, the day and year first above written.

LEVI JONES. [SEAL.]

Signed, sealed, and delivered in presence of
EDWARD HILL,
R. B. DOSWELL.

State of Texas, County of Galveston.

Be it known, that on this tenth day of October, eighteen hundred and forty-nine, before me, E. P. Huet, a Notary Public for Galveston County, personally came Levi Jones, to me personally known, and acknowledged that he had executed the deed on the reverse hereof, for the purposes and consideration therein stated.

In testimony whereof, I have hereunto subscribed my name, and affixed my seal of office, the day and year above written.

E. P. HUET,
Notary Public.

And the plaintiff gave in evidence the deposition of Felix A. Blucher, with the map attached thereto, which was as follows:

[For map, marked *F*, see original, page 35.]

That he resides at Corpus Christi, County of Nueces, State of Texas, and has resided there since the month of August, 1849. Witness states that he is the District Surveyor of the Land District of Nueces, and has charge of the maps and the records of the office of the District Surveyor of said district, and that the annexed sketch is a true copy of the surveys made for Levi Jones, assignee of Jose Maria Basquez, and Miguel Basquez, and that said sketch is a true copy of that portion of the map of his said land district, drawn by J. Snively, the former District Surveyor. That he, witness, made said sketch. That the town of Corpus Christi is directly upon the shore of Corpus Christi Bay, and upon said surveys, and is in a straight line from the Gulf shore of Mustang or Padre Islands, thirty miles. That he, witness, came to Corpus Christi first, in the year 1846. He, witness, knows all, or most of the defendants in this suit, were in possession of a portion of the land of said surveys, made for said Jones, assignee, &c. Witness further states, that the present value of the town site of Corpus Christi, is fifty thousand dollars, and that the two leagues surveyed for Levi Jones, assignee, &c., as aforesaid, is of the value of sixty thousand dollars, including said town site, or ten thousand dollars inclusive of the same. Witness does mean to include improvements. He, witness, thinks that in the year 1849, the value of the town site was not more than 5000 dollars, and that that value was created by the improvements. Without any

improvements the town site would not be of so much value, not more than perhaps 500 dollars. Witness further states, that said defendants were in possession of said lands at least one year prior to the 8th of October, 1849, and at that time the lots upon which said defendants resided were of a nominal value, say of the value of ten dollars each defendant. The value now of same is now, say one hundred dollars in best localities. This is their cash value without improvements. The annual value of the lots is but little or nothing. The defendants have made permanent and valuable improvements on the lots, during the time they have had possession thereof. These improvements were worth at least, one hundred and twenty (and he, witness, would think) perhaps one hundred and fifty thousand dollars. And further, witness saith not.

FELIX A. BLUCHER.

And here the plaintiff rested.

And thereupon, the defendants, who had appeared herein, offered to read in evidence on the trial of this cause, certified copies from the General Land Office of certain papers, that is, copies of the record of patents issued to Kelsey H. Douglass and John S. Thorn, as assignees; of the certificates issued to the same persons as assignees, and of the filed notes of the surveys made on said certificates, which were as follows, that is to say:

(*K.* 18.)

No. 18. This patent cancelled April 10th, 1848. Vol. 4.

In the name of the Republic of Texas.

To all whom these presents may come, know ye, I, Anson Jones, President of the Republic aforesaid, by virtue of the power vested in me by law, and in accordance with the statutes of said Republic in such case made and provided, do by these presents grant to Kelsey H. Douglass, assignee of Jose Maria Bargas, his heirs or assigns forever, one league of land situated and described as follows: In San Patricio County, on the west side of Corpus Christi Bay, and adjoining Survey No. 20, and known as Survey No. 21. Beginning at the north corner of said Survey No. 20, at a stake and mound on the bank of the Bay, thence with the meanders of the same, north 3° east, four hundred and eighty varas; north 14° 15′ west, one hundred and sixty varas; north, nine hundred and twenty varas; north 17° 45′ east, seven hundred and forty-two varas. Thence north 26° 30′ east, eight hundred varas; north 23° east, twelve hundred and fifty-eight varas; north 26° 30′ east, two hundred and ten varas; north 9° 30′ east, one hundred and seventy varas; north 63° west, four hundred and eighty-two and five-tenths varas, to a stake and mound on the eastern point of the Oyster Key. Thence south 45° west, twenty-two hundred and forty-seven and sixth-tenths varas; thence

south, three hundred and sixty and three-tenths varas; thence south 15½° east, one hundred and fifteen varas; thence south 57° west, two hundred and eighty varas; thence south 21° 45′ west, three hundred and ten varas; thence south 79° west, seven hundred and fifty-eight varas; thence north 87° 30′ west, three hundred and forty-five varas; thence north 58° west, one hundred varas, to a stake from which a mosquit tree, blazed and marked J, bears south 58° east, one hundred varas; thence south 45° west, seventy-eight hundred and seventy varas, through scattering mosquit timber, to a stake, from which a mosquit, 4 inches diameter, bears south 25° west, 20 varas, and another bears south 50° west, fourteen varas; thence south 45° east, twenty-five hundred varas, through scattering mosquit timber, to a stake, from which a mosquit, 6 inches diameter, bears north 36° west, twenty-five varas; thence north 45° east, eight thousand and seventy varas, to the place of beginning. Hereby relinquishing to him, the said Kelsey H. Douglass, and his heirs or assigns forever, all the right and title in and to said land, heretofore held and possessed by the government of said Republic, and I do hereby issue this letter patent for the same. In testimony whereof I have caused the great seal of the Republic to be affixed, as well as the seal of the General Land Office.

Done at the City of Austin, on the ninth day of July, one thousand eight hundred and forty-five, and the year of the Independence of said Republic, the tenth.

ANSON JONES,
President.
THOS. WM. WARD,
Commissioner.

General Land Office, State of Texas.

I, Geo. W. Smyth, Commissioner of the Gl. Land Office, do hereby certify, that the foregoing is a correct copy from the original record in this office.

In testimony whereof, I have caused the seal of the General Land Office to be affixed on the twenty-fourth day of December, in the year of our Lord one thousand eight hundred and forty-nine. [SEAL.]

GEO. W. SMYTH,
Comr. Gl. Ld. Office.

(*K.* 16.)

No. 24. This patent cancelled April 10th, 1849. Vol. 4.

In the name of the Republic of Texas.

To all to whom these presents may come, know ye, I, Anson Jones, President of the Republic aforesaid, by virtue of the power vested in me by law, and in accordance with the statutes of said Republic in such case made and provided, do by these presents grant to John S. Thorn, assignee of Miguel Basquez, his heirs and assigns forever,

one league of land, situated and described as follows: In San Patricio County, on the west side of Corpus Christi Bay, adjoining Survey No. 19, of one-third of a league for Nathan H. Watrous, and known as Survey No. 20, in District No. 1. Beginning at a stake and mound at the north corner of said Survey No. 19, on the bank of the Bay. Thence with the meanderings of the same as follows: North 36° west, five hundred varas. North 34° west, three hundred varas. North 19° west, five hundred varas. North 11½° west, four hundred and twenty-five varas. North 5½° west, five hundred and nine varas. North 16° west, five hundred and ninety-nine varas to a stake and mound on the bank of the Bay. Thence south 45° west, ten thousand five hundred and fifty varas, through scattering mosquite timber to a stake, from which a mosquite tree, 8 inches in diameter, bears south 25° west, nine varas, and another 4 inches diameter bears south 60° east, 24 varas. Thence south 45° east, through scattering mosquite timber to a stake and mound two thousand five hundred varas. Thence north 45° east, nine thousand five hundred and thirty-six varas through scattering mosquite timber to the place of beginning. Hereby relinquishing to him, the said John S. Thorn, and his heirs or assigns forever, all the right and title in and to said land, heretofore held and possessed by the government of said Republic, and I do hereby issue this letter patent for the same. In testimony whereof I have caused the great seal of the republic to be affixed, as well as the seal of the General Land Office. Done at the City of Austin, on the eleventh day of July, one thousand eight hundred and forty-five, and of the year of the Independence of said Republic, the tenth.

ANSON JONES,
President.
THOS. WM. WARD,
Commissioner.

The State of Texas, General Land Office.

I, George W. Smyth, Commissioner of the General Land Office, do hereby certify that the foregoing is a correct copy from the original record in this office.

[SEAL.] In testimony whereof I have caused the Seal of the General Land Office to be affixed on the twenty-fourth day of December, in the year of our Lord, one thousand eight hundred and forty-nine.

GEO. W. SMYTH,
Com'r Gl. Ld. Office.

(*K.* 20.)

No. 499.

This is to certify that Kelsey H. Douglass, assignee of Jose Maria Bargas, has appeared before the Board of Land Commissioners, for the County of Nacogdoches, and proved according to law that he arrived in this republic previous to the 2d May, A. D.,

eighteen hundred and thirty-five, and that he is a married man and entitled to one league and one labor of land, upon consideration of paying at the rate of three dollars and fifty cents for each labor of irrigable land, two dollars and fifty cents for each labor of temporal arable land, and one dollar and twenty cents for each labor of pasture land which may be contained in the survey secured to him by this certificate.

Given under our hands this first day of April, 1838.

JAS. H. STARR,
President.
ADOLPHUS STONE,
Assistant Commissioner.

District No. 1, Survey No. 21, west of the Nueces, and on Corpus Christi Bay, of one league.

Survey of one league of land for Levi Jones, assignee of Kelsey H. Douglass, assignee of Jose Maria Bargas, situated on the west side of Corpus Christi Bay, and adjoining Survey No. 20, of one league of land for said Jones, being a part of the land to which he is entitled as assignee of Kelsey H. Douglass, the assignee of Jose Maria Bargas, by virtue of Certificate No. 499, issued by the Board of Land Commissioners for the County of Nacogdoches, beginning at the north corner of said Survey No. 20, at a stake and mound on the bank of the Bay; thence with the meanders of the same north 3° east, 480 varas; thence north 14¼° west, 160 varas; thence north, 920 varas; thence north 17¾° east, 742 varas; thence north 26½° east, 800 varas; thence north 33° east, 1258 varas; thence north 26½° east, 210 varas; thence north 9½° east, 170 varas; thence north 63° west, 482 5-11 varas, to a stake and mound on the eastern point of the Oyster Reef; thence south 45° west, 2247 6-10 varas; thence south 3603 varas; thence south 15½° east, 115 varas; thence south 57° west, 280 varas; thence south 34¾° west, 310 varas; thence south 79° west, 748 varas; thence north 87½° west, 345 varas; thence north 58° west, 100 varas, to a stake, from which a mosquite tree, blazed and marked J, bears south 58° east, 100 varas; thence south 45° west, 7870 varas, through scattering mosquite timber to a stake, from which a mosquite tree, 4 inches in diameter, bears south 25° west, 20 varas, and another bears south 50° west, 14 varas; thence south 45° east, 2500 varas, through scattering mosquite timber, to a stake from which a mosquite tree, 6 inches in diameter, bears north 36° west, 25 varas; thence north 45° east, 8070 varas, to the place of beginning; said league containing 5 labors of arable land, and 20 labors of pastoral land.

JAMES M. MANNING,
Deputy Surveyor.

ALFRED BERRY,
MATTHEW FAIRCHILDS,
Chain Carriers.

SAN PATRICIO, April 15th, 1838.

I, James M. Manning, do solemnly declare, under my oath of office, that the above survey was made since the first day of February last.

JAMES M. MANNING,
Deputy Surveyor.

SAN PATRICIO, April 15th, 1838.

I do certify that I have examined the above field notes, and find them correct, and the survey done according to law.

JOHN BUCHANAN,
County Surveyor.

GENERAL LAND OFFICE, AUSTIN, Dec. 20th, 1849.

I, George W. Smyth, Commissioner of the General Land Office of the State of Texas, do hereby certify the foregoing to be a true certified copy of the originals on file in this office.

In testimony whereof, I hereunto set my hand and affix the seal of said office, the day and date above written.

[SEAL.]

GEO. W. SMYTH,
Commissioner.

(*K.* 17.)

No. 288.

This is to certify that John S. Thorn, assignee of Miguel Basquez, has appeared before the Board of Land Commissioners, for the County of Nacogdoches, and proved according to law, that the said Miguel Basquez arrived in this Republic previous to 2d May, eighteen hundred and thirty-five, and that he is a married man, and entitled to one league and one labor of land, upon the condition of paying at the rate of three dollars and fifty cents for each labor of irrigable land; two dollars and fifty cents for each labor of temporal or arable land, and one dollar and twenty cents for each labor of pasture land which may be contained in the survey secured to him by this certificate.

Given under our hands this 17th day of February, 1838.

Attest,

JAS. H. STARR,
President.

WM. HART,
ADOLPHUS STONE,
Assistant Commissioners.

K. H. MUSE,
Clerk.

District No. 1, Survey No. 20, west of the Nueces, on Corpus Christi Bay, of one league of land.

Survey of one league of land for Levi Jones, assignee of Kelsey H. Douglass, assignee of John S. Thorn, the assignee of Leonard M. Thorn and Miguel Basquez, situated on the west side of Corpus Christi Bay, adjoining Survey No. 19, of one-third of a league of land for Nathan H. Watrous, being a part of the quantity of land to

which said Jones is entitled, as assignee of Kelsey H. Douglass, assignee of John S. Thorn, the assignee of Leonard M. Thorn, and Miguel Basquez, by virtue of Certificate No. 288, issued by the Board of Land Commissioners for the County of Nacogdoches. Beginning at a stake and mound, at the north corner of said Survey No. 19, on the bank of the bay; thence with the meanderings of the same, north 36° west, 500 varas; thence north 24° west, 300 varas; thence north 19° west, 500 varas; thence north 11½° west, 425 varas; thence north 5½° west, 509 varas; thence north 16° west, 599 varas, to a stake and mound on the bank of the bay; thence south 45° west, 10,550 varas, through scattering mosquite timber, to a stake, from which a mosquite tree 8 inches in diameter bears south 25° west, 9 varas; and another, 4 inches in diameter, bears south 60° east, 24 varas; thence south 45° east, 2500 varas, through scattering mosquite timber, to a stake and mound; thence north 45° east, 9536 varas, through scattering mosquite timber, to the place of beginning. Said league containing 4 labors of arable and 21 labors of pasture land.

JAMES M. MANNING,
Deputy Surveyor.

ALFRED BERRY,
MATTHEW FAIRCHILDS,
Chain Carriers.

SAN PATRICIO, April 14, 1838.

I, James M. Manning, do solemnly declare, under the oath of my office, that the within survey was made since the first day of February last.

JAMES M. MANNING,
Deputy Surveyor.

SAN PATRICIO, April 14, 1838.

I do certify that I have examined the within field notes, and found them correct, and the survey done according to law.

JNO. BUCHANAN,
County Surveyor, S. P. County.

And the defendant also, in connection therewith, offered to read in evidence, the depositions of Stephen Crosby, taken for the defendant, and part of the deposition of the same witness, taken for the plaintiff, in which the witness testified as follows:

(*F.*)

That he was, at this time, Commissioner of the General Land Office of the State of Texas. That on the 11th day of July, A. D. 1845, two patents issued to Kelsey H. Douglass, assignee, one of them being to said Douglass as assignee of Miguel Basquez, and the other as assignee of Jose Maria Bargas; each for one league of land,

the first by virtue of Headright Certificate No. 288, issued by the Board of Land Commissioners of Nacogdoches County, and the other by virtue of Headright Certificate No. 499, issued by the same Board of Land Commissioners. That on or about the 9th day of April, A. D. 1849, application was made to him as the Chief Clerk of the General Land Office aforesaid, and in the absence of the Commissioner of said office, to have said patents cancelled, which he, deponent, refused to do at that time, and afterwards only induced to do, by the written opinion of the Attorney-General, stating that the former patents could be cancelled and others issued, which was accordingly done on the 11th day of April, 1849. That said cancellation of the first and issuance of the second patents to Levi Jones, was not done under the order or decree of any court, but as above stated, entirely upon the opinion given by the Attorney-General.

S. CROSBY.

(*G.*)

That on the 11th day of July, 1845, two patents issued to Kelsey H. Douglass, assignee, one to said Douglass, as the assignee of Miguel Basquez, and the other as the assignee of Jose Maria Bargas, each for one league and labor of land, the first by virtue of Headright Certificate No. 288, issued by the Board of Land Commissioners of Nacogdoches County; the other by virtue of Headright Certificate No. 499, issued by the same Board of Land Commissioners. On or about the 9th day of April, A. D. 1849, application was made to me, as Chief Clerk of the General Land Office, in the absence of the Commissioner, by Levi Jones, to have said patents cancelled, which I refused to do, and was only induced to comply with the request of said Jones, under the written opinion of the Attorney-General, whose opinion was, that the former patents could be cancelled and others issued to said Levi Jones, as assignee, which was accordingly done on the 10th day of April, A. D. 1849. The cancelling of the first, and the issuance of the second patents, was not done under the order or decree of any court, but as above stated, entirely upon the opinion of the Attorney-General.

The field notes of the surveys having been returned to the General Land Office, in the name of said Levi Jones, as assignee of said Douglass, and therefore the reason urged for cancelling the patents was, that they had issued without proper authority to said Douglass, through an inadvertence on the part of the General Land Office.

S. CROSBY.

To the admission of all which evidence, that is to say, the copies of the record of the patents, the certificates, the surveys, and the testimony of Stephen Crosby, the plaintiff, by his counsel, objected, for the following reasons:

First. Because it was not competent for the defendants to attack

the validity of the patents, under which the plaintiff claimed, in this collateral manner.

Second. Because the defendants, having shown no title or equitable claim to the land accruing or arising to them in any manner, nor any right to the possession, but standing in the position of mere intruders, ought not to be permitted to go behind the patents under which the plaintiff claimed, in order to attack their validity.

Third. Because the evidence offered did not tend to invalidate the plaintiff's title, or to prove any issue in the case, and was therefore irrelevant.

Fourth. Because the defendants could not introduce evidence of the surveys without first showing by what right they were made, and proving the assignments of the certificates, and they could not be permitted to read a deposition piecemeal, selecting only such parts as they thought proper.

All of which objections were overruled by the court, and the defendants were permitted to read the said copies and deposition, and parts of the second deposition, in evidence to the jury, to which ruling of the court the plaintiff, by his counsel, excepted, and tendered this his first Bill of Exceptions, which he prays may be signed, sealed, and made part of the record of this cause; and the same is now done accordingly.

JOHN C. WATROUS. [SEAL.]

Feb'y 8th, 1856.

J. TEMPLE DOSWELL
v.
ENRIQUE DE LA LAUZA et als. } No. 234.

Be it further remembered, that on the trial of this cause, after the evidence stated in the first Bill of Exceptions had been given to the jury, the defendants proceeded to read in evidence the depositions of J. Miguel Aldreto, and Blas Maria Falcon, in which they testified as follows:

(*H.*)

That he has seen, and is conversant with the annexed grant from Francisco Vital Fernandez, as Governor of the State of Tamaulipas, to Enrique Villarreal, ever since the time it was made. That he is acquainted with the manner in which the said Governor executed and authenticated grants made by him, which was by a printed signature with his rubric or scrawl attached thereto. That he has seen him execute his grants in that way, and is acquainted with his rubric or scrawl. That he examined and believes that the rubric or scrawl affixed to the printed signature of said Governor in said grant, to be that of said Governor, and that which was always used by him in such acts, and believes the executions of said grants to be genuine. Witness further states, that he has seen Jose Guadalupe Samano,

Secretary to the Government of Tamaulipas, sign and execute papers. That he is acquainted with his signature and rubric or scrawl, and with the manner in which he executed and authenticated papers signed by him as said secretary; and that he believes the signature and rubric of the said secretary, signed to the annexed papers, comprising the grant, survey, and field notes, and the signatures and acts of the said secretary, and at the date of said acts, he, the said Jose Guadelupe Samano, was the acting Secretary, or Secretary of State, for the State of Tamaulipas. Witness further states, that he is acquainted with the said survey attached to said grant made by Antonio Canales, as surveyor. Knows that he, Canales, at the date of the said survey was acting surveyor for the said State of Tamaulipas; was well acquainted with the signature and rubric or scrawl of the said Canales. Has seen him write, and is acquainted with his mode of authenticating his official acts, and believes that the signature and rubric thereto attached to said survey, is the signature and rubric or scrawl of the said Canales as surveyor; and knows that the said survey is executed in the mode in which he always authenticated his acts. Witness also states, that he knows the said Villarreal had peaceable possession of said land, in said grant and survey mentioned, from the year 1810, which he held previous to said grant, under title from the Spanish Government, but which was, as he has always understood, lost by a flood, which induced said Villarreal to obtain the annexed grant. That the said Villarreal continued in possession of said land, using the same, having cattle, servants, making improvements, and building houses thereon, both prior to and since the date of said grant, and until he was succeeded in the possession thereof by Henry L. Kinney, who purchased the said land of the said Villarreal in the year 1839, and took possession of the same at that time or before, but that the title to the same was not extended until the following year. That the said Villareal was a native of Mexico, and at the time of said grant was a citizen of the State of Tamaulipas, and held a commission in the army; and that he, witness, has no interest in the event or result of this suit.

J. MIG'L ALDRETE.

(*I.*)

That he has seen and is conversant with the annexed grant from Francisco Oital Fernandez, as Governor of the State of Tamaulipas, to Enrique Villarreal, ever since the time it was made; that he is acquainted with the manner in which said Governor executed and authenticated grants made by him, which was by a printed signature, with his rubric or scrawl attached thereto; that he has seen him execute his grants in that way, and is acquainted with his rubric or scrawl; that he has examined and believes that the rubric or scrawl affixed to the printed signature of said Governor, in said grant, to be that of said Governor, and that which was always used by him

in such acts; and believes the execution of said grant to be genuine. Witness further states, that he has seen Jose Guadelupe Samano, Secretary to the Government of Tamaulipas, sign and execute papers; that he is acquainted with the signature and rubric or scrawl, and with the manner in which he executed and authenticated papers signed by him, as said Secretary; and that he believes the signature and rubric of the said Secretary, signed to the annexed papers, comprising the grant, survey, and field notes, are the signatures and acts of the said Secretary; and the date of said acts he, the said Jose Guadelupe Samano, was the Acting Secretary, or Secretary of State, for the State of Tamaulipas. Witness further states, that he is acquainted with the said survey attached to said grant, made by Antonio Canales, surveyor; knows that he, the said Canales, at the date of said survey, was Acting Surveyor for the said State of Tamaulipas; was well acquainted with the signature and rubric or scrawl of the said Canales; has seen him write, and is acquainted with his mode of authenticating his official acts, and believes the signature and rubric attached to said survey is the signature and rubric or scrawl of said Canales, as surveyor; and knows that said survey is executed in the mode in which he always executed his acts. Witness also states, that he was with said Canales when he surveyed said land mentioned in said grant and survey; that he, Canales, surveyed the same . . . Witness also knows that the said Villarreal then, in 1831 and 1832, took possession of said land in said grant and survey mentioned, and that he retained peaceable possession thereof, and that he knows that the said Villarreal had possession of the same from the year 1810, which he held previous to said grant and survey, under title from the Spanish Government, but which was, as he always understood, lost by flood, which induced the said Villarreal to obtain the annexed grant; that the said Villarreal continued in the possession of the said land, using the same, having cattle, servants, making improvements, and building houses thereon, both prior to and since the date of said grant, and until he was succeeded in the possession thereof by Henry L. Kinney, who purchased said land of the said Villarreal, in the year 1839, and took possession of the same, at that time or before; that the said Villarreal was a native of Mexico, and at the time of said grant was a citizen of Tamaulipas, and held a commission in the army. Witness is conversant with the Spanish language, and says he has no interest in the result of this suit.

BLAS MARIA FALCON.

And upon the objections of the plaintiff, by his counsel, to certain parts of said depositions, the Court stated to the jury that the depositions were not evidence of the grant referred to therein, as made by the State of Tamaulipas, in 1831, nor of a sale from Villarreal to Kinney. And the defendants further introduced and read in evi-

65-

dence, for the purpose of showing the extent and boundaries of the land claimed to have been in the possession of said Villarreal, the following papers, which had been previously offered by the defendants, as a grant from the said State of Tamaulipas, but excluded for that purpose by the Court, on the objections of the plaintiff, that is to say.

(*I.*)

Seeco Segundo [L. S.] Doce Reales
Para los anos de 1831 y 1832.

El ciudadano Francisco Vital Fernandez, Gobernador Constitutional del Estado libre y soberano de Tamaulipas.

Por cuanto el ciudadano Capitan Enrique Villarreal vecino de la Villa de Matamoras denuncio diez sitios de agostadero de ganado mayor en el paraje nombrado el Rincon del Oso eu la cotta del Rio le las Nueces cuya jurisdiccion aunno asigna a niuguna de las Villas limitrofes y corridos los tramites necessarios segun lo dispuesto por la ley de colinizacion como consta del espediente instruido al epecto y que se archiva en este gobierno habiendo satisfecho a la haciendo del Estado los cuatrociento veinto peros en que fueron justipreciados: he venido en adjudicar y conceder al referido ciudadano Capitan Enrique Villarreal los mencionados diez sitios de agostadero de ganado mayor comprendidos bajo los linderos angulares y demarcaciones que constan en el mapa adjuno, refrendado con el sello de este gobierno y rubricado por mi Secretario los cuales para mayor claridad se denominan eu el presente titulo del modo seguiente.

El Refugio y el del Llano Norte a Sur por el Pomiente! el del Llano y el del cayo Pomiente a oriento por el lado del Sur: el del cayo y el del paro y el del Refugio por el Donado del Norte. Linda por el Pomiente con el agostadero de Barranco Blanco, por el sur con el cayo del Oso divisiorio de las tierras de Corpus Christi, y por los dimas Rumbos con las lagunas y Rio de las Nueces.

En cuya vistud confiero al interesado pleno dominio y propiedad en ellos para el sus hijos y sucesores: y mando a todas las autoridades y havitandes del Estado, hayan teuyan y reconozcan al referido C. Villarreal por legitimo senor y dueno de los repetidos diez sitios de ganado mayor que de le mercedan: y al efecto el alcalde de la Villa de Camargo pondra al interesado en legal posesion de ellos, previa celacion de colindantes, anatandolo asi al calce de este titulo para debida constancia, y conservando en el archivo de su juzgado copia certificado del ante de posesion que levante.

Dado en Ciudad Victoria capital del Estado de Tamaulipas a los diez y siez deas les mes de Novembre de mil ochocientos trienta y uno 8o de la instalaceon de Este Estade.

FRANCISCO VITAL FERNANDEZ. [RUBRIC.]

(For map, see original, page 63.)

Este terreno segun apparece el Mapa, quedo en figura irregular, por que la Laguna Madre y el callo del Oso lo oprimen por todos lados, menos pr. el del Oriente. Pero puede reducirse a dos de conveido valor en la geometria, como es el triangulo. O. B. G. y el rectangulo a. d. g. o. La area que ambos comprenden es de 225,000,000 de varas cuadradas, la cual, unida a la de los potreritos h. i., componen 250,000,000 de varas cuadradas, o diez sitios de agostadero de ganado mayor que se demarcaron bajo los Linderos siguientes: a, lindero del Llano: b. el del Refugio, divisorio igualmte. de las trras. de Barranco Blanco: g. lindo. del paso: d. el del callo del Oso: h. potrero de San Jose: i. potrero de S. Enrique: bc. rio de las Nueces: u. Laguna de los Caidos: l. otra Laguna de Agua Salada: md. cayo del Oso, el cual quedo de divisorio por el lado del Sur entre este Agostadero y el de Corpus Christi. La linea o lado b. g. opuesto el angula recto en o., es de 471 cordeles tres varas, raix cuadrada de la suma de los cuadrados de los lados o. b. y. o. g. porque el cuadado de la hipotenusa es igual a la suma de los cuadados de los lados. La medida se hizo con la mayor exactitud y escrupilosidad posible, remidendose el cordel cada media legua y correjidos los diez grados de declinacion al Nordeste que tienen los agujones en estas tierras. Todo lo que pa. la debida consta. asi lo certifico y firmo en Camargo a 2 de Agosto, de 1831.

ANTONIO CANALES.

Cotejado y conforme con su Original. Ciudad Victa., Octe. 25, de 1831. 8o de la instalacion del Congo.

ANTONIO CANALES,
Agrimor.

Le agrega al titulo como se previene por S. E. el Gobenador, y para constancia se anota.

SAMANO,
Srio.

And the defendants, with said papers, also read the following translation, which it was agreed was substantially accurate, but to be subject to explanation and further comparison with the original, to wit:

(N.)

Second Class seal, For the years	[L. S.]	Twelve Reals, 1831 and 1832.

Francisco Vital Fernandez, a Citizen in and Constitutional Governor of the Free and Sovereign State of Tamaulipas.

Be it known, that Captain Enrique Villareal, a citizen of the aforesaid State, and a resident of the Town of Matamoras, has denounced ten leagues (sitios) of summer pasture lands, fit for grazing large cattle, in that part of the country called Bear's Corner (Rincon del

Oso), situated upon the bank of the river Nueces, the jurisdiction of which has not been assigned to any town in that vicinity, he having followed and complied with the requisites of the colonization law, as will be seen by the document drawn up to that effect, and deposited in the archives of this government, and having paid to the treasury of this State the sum of four hundred and twenty dollars (420), amount at which said lands were valued. Therefore do I hereby certify, adjudicate, and grant to the said Captain D. Enrique Villarreal, a citizen as aforesaid, the before-mentioned ten leagues (sitios) of summer pasture lands, fit for grazing of large cattle, all of which come within the angular demarcation limits shown upon the annexed map, legalized with the seal of this government, and rubricated by my secretary, and which, for greater clearness, are demonstrated in the deed in the following manner: the western limits of which are contiguous to and find their boundary upon The Refuge (El Refugio) and the plains in that vicinity, and in a direction from north to south; the southern boundary is formed by and contiguous to the Bear's Falls (Cayo del Oso) and the adjoining plains, in a direction from west to east; the eastern limit is contiguous to and bounds upon the pass (El Paso) and the Bear's Falls, in a direction from south to north; and the northern boundary finds its limit by the Pass and the Refuge; the boundary on the west is formed by the pasture lands of the White Ravine (El Baranco Blanco); on the south by the Bear's Falls, which forms the divisionary line and limit of the Corpus Christi Territory. The direction of the boundary of the remaining part being formed by and running along the confines of the said lakes and Nueces River.

In witness hereof, I transfer to the party interested the full dominion and property over the said lands, for himself, his heirs, and successors, and do order all the authorities and inhabitants of the State to have, to hold, and to recognize the before-mentioned E. Villarreal for the legitimate lord and owner of the said ten leagues (sitios) of summer pasture lands, fit for grazing large cattle, which are hereby granted to him, and to this end, the Alcalde of the Town of Camargo will give him legal possession of the same, previously citing the owners of the surrounding border lands to be present, notifying the same upon the title deeds for all necessary and judicial purposes, and preserving a certified copy of the decree of possession in the archive of his judicature. Given in the City of Victoria, Capital of the State of Tamaulipas, this 16th day of November, one thousand eight hundred and thirty-one: eight of the Congress of this State.

FRANCISCO VITAL FERNANDEZ,
JOSE GUAO. DE SAMANO,
(Scro) Secretary.

BEAR'S CORNER (Rincon del Oso).

(For map, see original, page 68.)

By the map this territory appears to form an irregular figure, being surrounded by the lakes and Bear's Falls on all sides excepting on the west, but can be reduced to two figures known in geometry as the triangle O. B. G. and the parallelogram A. D. O. G., the area of both measuring 225,000,000 square varas, to which add the superfice of the two islands, H and I, make 250,000,000 square varas, or ten leagues of summer pasture lands, fit for the grazing of large cattle, and bound within the following limits or demarcation; A, is the limit on the Plains (llanos); B, on the Refuge (El Refugio), and the divisionary line upon the White Ravine (Barranco Blanco); G, is the boundary at the Pass (El Paso); and D on the side of the Bear's Falls (Cayo del Oso); H, is a small island, known by the name of St. Joseph (San Jose); I, is another small island called St. Henry (San Enrique); C, is the River Nueces; N, is the lake of the falls which forms the divisionary line on the south side between those lands and the territory of Corpus Christi. The line on the side B. G., opposite the right angle O, measures 471 cords, 3 varas, the square root of the sum of the squares of the sides O. B. and O. G., because the square of the hypothenuse or side opposite to the right angle is equal to the sum of the squares of the two sides contained in the right angle. This measurement was carefully executed, regulating the cord every half league, and correcting by compass the ten degrees of northeast declination existing upon those grounds. All of which for the proper use and security of the purchaser in case of necessity,—I hereby certify and sign at Camargo, this second day of August, one thousand eight hundred and thirty-one.

ANTONIO CANALES.

Confronted with the original and found correct, in the City of Victoria, 25th October, 1831, eight of the installation of the Congress of this State.

ANTONIO CANALES,
Agrmr. (Surveyor).

This document is joined to the title deed as ordered by His Excellency the Governor, and in testimony of the same it is registered.

SAMORIA,
Scro. (Secretary.)

And thereafter the defendants furthered offered to read in evidence the following paper in the Spanish language, after having proved its execution, together with the translation thereof, which it was agreed as before should be subject to revision or correction, that is to say:

(O.)

Conste per precente documto. que los abajo subscritos hemos celebrado un contrats de compra a bessta de un citio de terra cito en el

Rincon del Ozo comprendundose en dhs. citio la Habitacion la habitacion que tiene fermadad el segundo, cantidad de cuatro mil pasos, y bajo las condeceones siguientes.

1a. Lue a seis merces de plazo de esta fha. el segundo entrigara el primero la cantidad de un mil pesos en efectos a mejores previos que los corrientos eni Matamoras.

2a. Lue al ano entregara un mil pesos en reales a los deis ocho meces otros mil pesos en efetos con arreglo a la primera condicion, y los mil pesos restantes en reales a los dos anos.

3a. Al benumto. del ultimo plazo, el primero se compromete a est enderle al segundo la correspondiente Escritem a de bessta, rajo las fermaledadas preseritas en dericho y con arreglo a las leyes el Pais.

4a. Lue todos los costos de medidas seran per cuante del segundo y los demas derichas los pagaran entro ambos contra tantes per mitad.

5a. Para que tenga su verificativo el segundo como Estrangera se compromete a recabur del supremo Gobrna. Mejico no la correspondente casta de ciudadina, pa. obtenes dericho a bienes raices dentro del Territoria dela Republica.

Y en fu de qe. esempbiremos segun homos esteputado atro gamas el precenta documento per duplicado que dando un tanto poder de cada uno: es tambien condicion qe. si a un y conbiniero entrar en trato con atro u atros citios sera bajo el mismo prino qe. es vendedo este. Siendo testigos de este comberrio los qe. a continuacion nuestra subscriben. En el Rincon del Ozo a 4 de Enero de 1840.

ENRIQUE VILLAREAL.
H. L. KINNEY.

Como testigo,
PEDRO ARGUELLES.
FREDERICO BELDEN.
ALPHONSE.
ANTONIO RAMEREZ.

Recibi del Sor D. Enrique Suin lascoulidad de ocho ciento cuarenta y cinco p's enrreales en barine partidas en complimto. de trato celebrado segun consta en el documento qe. atude.

ENRIQE. VILLAREAL.

MATAMORAS, Ab'l 12, de 1840.

Republic of Texas, Corpus Christi, San Patricio County.

Personally came and appeared before me, Wm. J. Downing, Notary Public, for the County of San Patricio, Frederic Belden, who being duly sworn deposeth on oath, that he was present at the signing, sealing, and delivery of the foregoing instrument of agreement, between H. L. Kinney and Enrique Villareal, and that the same was made and entered into with the full knowledge, approbation, and con-

sent of both parties, and the names within written, were written by the said H. L. Kinney and Enrique Villareal themselves.

Given under my hand, and seal of office, in the Town of
[SEAL.] Corpus Christi, this twenty-third day of September, A. D. 1845.

WM. J. DOWNING,
Notary Public, San Patricio County.

Filed for record, this the 9th day of March, A. D. 1847, at the hour of 6½ o'clock P. M.

EDWARD FITZTARALD,
Clerk of the Nueces County Court, and Ex-officio Recorder.

Recorded in Book A, pages 11 and 12, March 10th, A. D. 1847.
EDWARD FITZTARALD,
Recorder.

(Translation, marked P.)

Be it known by the present document, that we, the subscribers to the same, celebrated a sale and purchase of one (sitio) league of land, situated in the (Rincon del Oso) Bear's Corner, embracing in the same, the habitation of the second, in the sum of four thousand dollars, and under the following conditions:

1st. That at six months after date, the second will deliver to the first the sum of one thousand in goods, cheaper than they can be purchased at Matamoras.

2d. That at one year he will deliver one thousand dollars in cash; at eighteen months another thousand dollars in goods, as stipulated in the first condition, and the remaining one thousand dollars at two years.

3d. On the coming of the last-mentioned date, the first obliges himself to extend to the second, the corresponding deed of sale, under all the formalities required by law, according to the laws of the country.

4th. That all the expenses of surveying will be defrayed by the second, and all other dues will be paid between the contracting parties, by halves.

5th. In order to become duly competent to hold property in the of the Republic, the second, as a foreigner, compromises himself to obtain from the Supreme Mexican Court, his corresponding card of citizenship.

And in faith, that we will fulfil according as we have stipulated, we give the present document in duplicate, each of us holding a copy; it is also a condition that, should it be convenient to each to enter into an agreement for one or more (sitios) leagues, it will be under the same conditions as the present.

Being witnesses to this agreement, those in continuation of our

names sign. In the (Rincon del Oso) Bear's Corner, 4th January, 1840.

ENRIQUE VILLAREAL,
H. L. KINNEY.

As witness,
PEDRO ARGUILLES,
FREDERICK BELDEN,
ANTONIO RAMIREZ.

Received from Henry Kinney, the sum of eight hundred and forty-five dollars in cash, at several times, in fulfilment of the agreement entered into, as shown by the foregoing document.

ENRIQUE VILLAREAL.

MATAMORAS, 12th April, 1840.

To the admission of which paper and translation, the plaintiff, by his counsel, objected, for the reasons specially assigned hereafter, on the subsequent motion to exclude the same papers from the jury; but the court overruled the objections, and permitted the defendants to read the papers to the jury, to which ruling the plaintiff, by his counsel, excepted. And thereafter, the defendants further offered in evidence the following paper, purporting to be a copy of an act of sale, passed before Leandro Ramirez, as Notary Public, in the City of Matamoras, in Mexico, after having proved the signature of said Ramirez, and that, at the time signing the same he was a Notary Public in the City of Matamoras, together with a translation thereof, which it was agreed should be subject to correction, as follows:

R.

Sello Primero		seis Pesos.
Para los anos de mil	[SEAL.]	ochocientos trienta
y ocho y ochocientos		trienta y nuevo.

En la Ciudad de Matamoras a los dies y seis dias del mes de Julio de mil ochocientos cuarenta y dos anos anti mi el Escribano Publico y testigos comparecioron el Captain Don Jose Henrique Villareal de esta vicinidad a quien doy fi conoze y Don Henrique S. Kinney a quien no visto mas que en esta vez y dejo el primero que por si y nombre de sus mijas herederos y sucesores y de quien de ellas habiera titule vos y causa en cualquiera manera vende y da en vinte real enajenarion perpetua por piro de heredad para siempra el esspresado Senor Don Henrique L. Kinney y a los suyas un sitios de agostadero constante de viente y cinco milliones de varas cuadradas, y londando por el Norte con laguinas de agua salado por el oriente to mismo por el sur con tierras del oberguate y del mismo modo por el poniente, el cual declara de conformidad con el articulo decimo de la ley de catorce de Marz del ano corriente

y para que se sepa perfecaniente su seluacion, que esta, distance le mas de ciento leguas de la costa del mar en terrenos de esta departamento y a la margen derecho de las lagunas donde emboca el Rio de las Nueces el cual hubo el oborgante por merced que le hizo el Gobierno del anti qui estado qui ahora forma esta departamento medeanto el pago qui hizo en la misma forma que las leyes to despoman, y que medeanto el dominio que por tales titulos tiene en el terreno mencionado lo vende libre de todo gravamin y contodas sus entradas y salinas usos castumbres y servidumbres que ha tenido tiene y le perlenecen segun derecho en dos mil quinientas peras que el otrogante confura tener recebedas renunciando la ley nueve titulo uno partida quinta y el tiempo qui prefino para poner esepcion del doner no recibido y asi mismo declara qui no hay lecion en precio y si la hubiera en poca o mucha suma hace donacion perfecta en el comprador la que quiera se tenga como incinnada ante Juez competente, con renuncia de la ley dos titulo uno libro duz de la novisima recopilacion. Y desde hoy so desar podera y a los suyas de cuanto dominio le correspondia en el citado terreno y quiera que el comprador con salo la capia autorezada que se le dé de esta escritura que entre y se apodere de el, y a demas para que la vinta su curta y seguras se obliga a la eviccion y saneanuento en legal forma, y a toda cual quiero ser aprenuado solo in virtua de esta escritura y piramento del que la posea en qui defure su importe. Y el comprador hallandon presente acepto la vinta con las renunciaciones correspondentes a su firmoru y en especial la de la ley dos titulo uno libro duz dela novisima recopilacion; oblegando los dos sus bienes presentes y futuras dando a qui por inserta la clausula guarantigia dispensde habor sedo instruidas del que significa asi to otorgaron y formaron siendo testigos Don Rafael Garza y Garza Don Antonio Cordora y Don Antonio Lopez presentes y vecunos. Henrique Villarreal, Henrique L. Kinney, Leandro Ramerez, Escribano Publico, Nota Marginal. Vento Real y se agregandas recibos del administrador de rentas uno de suenta das pesos cuatro reales del derecho de alcabala y atro do trienta nueva pasos por la contribucion causada desde el ano de trienta y seis al do cuarenta y uno fecha utsupra, doy fi.

RAMIREZ.

Sacon de su registro en la misma fecha, &c. Su atorgamiento para entregar al comprador en un pligo de papel del sello primero corrunta que certifies en fi de lo cual y deg me halle presente al otorgamiente del contrato q. contiene esta escritura signo y firma. Ent. ruglones; mas de; las Lugunas derido emboca el; vale.

En testimonio [L. R.] de verdad.

LEANDRO RAMIREZ,
Scrio.

CONSULATE OF THE UNITED STATES OF AMERICA,
MATAMORAS (MEXICO).

I, J. D. Marks, Acting Consul of the United States of America,

do hereby certify that Leandro Ramirez, whose name is signed to the preceding document, is a Notary Public for this city, duly commissioned and qualified, and that all acts by him signed, are entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand, and affixed the seal of this Consulate, at Matamoras, this twenty-second day of July, A. D. 1842.

J. D. MARKS,
Acting Consul.

Translation of the foregoing paper (marked S).

First seal, For the two years, [L. S.] Six dollars, 1838 and 1839.

Legalized for the two years of [L. S.] 1840 and 1841.

Legalized for the two years of [L. S.] 1841 and 1842.

In the City of Matamoras, on the 16th day of the month of July, 1842, before me, the Notary Public and witnesses, appeared the Captain Don Jose Henrique Villareal, of this vicinity, whom I know, and to whom I give credit, and Don Henry L. Kinney, whom I have not seen more than this time; and the first said that, for himself, and in the name of his sons, heirs, and successors, and of whom of them shall have title, voice, or cause in any manner, he sells and gives in sale, real and perpetual alienation, as an inheritance forever, to the aforesaid Mr. Henry L. Kinney, and to *his* (heirs), &c., a league of grazing land, containing twenty-five millions square varas; bounded on the north by Lagunas of salt water, on the east in the same manner, on the south by the lands of the appearer, and on the west in the same manner, which he declares to be in conformity with the tenth article of the law of the fourteenth day of March of the present year; and that he may perfectly know his situation, that it is distant more than seven leagues from the coast of the sea, on the lands of this department, and on the right margin of the Lagunas, into which empties the Nueces, which the appearer holds by grant, which was made to him by the government of the ancient state which now forms this department, by virtue of the payment which he made, in the same form required by law: and which, by means of the dominion which by such title he has in the said lands, he sells free of all charge, and with all ingress, egress, uses, customs, and servitudes which it has had, has, and which pertains according to right, for two thousand five hundred dollars, which the appearer confesses to have received, renouncing law 9, title 1, partidas 6, and the time which the law prescribes to interpose the exception of the money not received; and he declares that there is no lesion in the price, and if there shall be, in a greater or smaller sum, he make a perfect gift to the purchaser, which he wishes to be taken as proved before a com-

petent judge; with a renunciation of law two, title one, book ten, of the Nov. Recop. And from these terms dispossesses himself and his, of whatever dominion belongs to him in the aforesaid land, and desires that the purchaser alone, with the authenticated copy given him of this writing, do enter and possess himself of the same; and besides, so that the sale may be certain and secure, he binds himself for an eviction and indemnity in legal form; and to all which he agrees to be compelled only in virtue of this writing, on oath, of which he possesses, in which is represented its import (and the same purchaser being present accepting the sale, with the renunciations corresponding to its security, and especially that of law two, title one, book ten, of the Nov. Recop.), binding all his goods, present and future, granting for here inserted, the clause of guaranty, after being instructed as to its signification. Thus contracted and signed, being witnesses, Don Rafael Garza y Garza, Don Antonio Cordova, and Don Antonio Lopez, present and residents.

HENRIQUE VILLAREAL,
HENRY L. KINNEY.
LEANARDO RAMIREZ,
Notary Public.

Marginal Note, Real Sale. And there is annexed two receipts of the administrator of the revenue, one of sixty-two dollars four reals of the duty of excise, and the other of thirty-nine dollars for the contribution made in the year thirty-six, that of forty-one, the date above.

I give credit. RAMIREZ.

Copied from the register at the date of its execution, to deliver to the purchaser, in one sheet of paper of the current first seal, which I certify in faith of which, and that I found present the maker of the contract, which is contained in this instrument, I subscribe and sign. Interlined: mas de—las lagunas donde emboca el valed.

In testimony of the truth,

LEANDRO RAMIREZ,
Notary.

To the admission of which paper and translation, the plaintiff, by his counsel, excepted, for the following reasons.

First. Because said paper is offered as a copy of a notarial act, passed in a foreign country since the independence of Texas, and it is not proved to be a true or compared copy, nor is it authenticated in any mode recognized by our laws, or by the principles of evidence in force in our courts.

Second. Because the notarial act, if proved by this copy, was not competent or sufficient to convey lands in Texas, at the time it was made, nor competent to serve as color of title.

Third. Because the boundaries and locality of the land, which said

notarial act attempts to convey, are not sufficiently defined therein, and the said act is void, as a conveyance or as color of title, for uncertainty.

Fourth. Because it appears on the face of the act, that it was a contract or bargain made in time of war with an alien enemy to the Republic of Texas, domiciliated in the enemy's country.

All of which objections were overruled by the court, and the defendants were permitted to read the said paper and translation in evidence to the jury. To which ruling of the court, the plaintiff, by his counsel, excepted. But the court gave the plaintiff leave to move to exclude both the papers herein before mentioned, that is, the contract of 1840, and the notarial act of 1842, from the consideration of the jury, after the testimony had been closed. And thereafter, the defendants further read in evidence, a second deposition of J. Miguel Aldrete, and the depositions of Nepomucend Villareal, William O'Docharty, H. A. Gilpin, and Thomas Parker, who severally testified as follows:

T.

Witness further states, that said Villarreal first took possession of the land named in said grant, in the year 1812 and 13, as he, witness, understood afterwards, said Villareal was driven off by the Indians, and he, witness, knows that he again took possession in 1824, and continued to hold possession down to the year 1830, some 000, and that when he went out of possession, Col. Kinney, the defendant, took possession under him: Col. Kinney, defendant, has had possession since taking possession from Villarreal as aforesaid, and has always, as he, witness, looked upon it, has always ever since had possession, down to this time; and further witness saith not.

J. MIGUEL ALDRETE.

(*U.*)

I have never known any other owner to this land, except Captain Villareal and Colonel Kinney.

(*V.*)

I am not acquainted with the plaintiff, and am partially acquainted with some of the defendants. I have been acquainted with Colonel H. L. Kinney, and have known him personally, since 1841. I know that in 1831, when I was surveying for McMullen and McGloin, taking the distance in a straight line from the mouth of the Nueces to the public square in San Patricio, that Captain Villareal had a rancho established a little above where Col. Kinney has his rancho at present, at Barranco Blanco, but how long before that time I cannot say.

I further know, that in 1841, the Captain Villareal mentioned,

employed me to come and survey * * * * to Col. Kinney. When I was ready to start the same year for Corpus Christi, the said Captain Villareal did not come as he had promised, on account of his being sick with the yellow fever. When I arrived, I surveyed one league of land for Colonel Kinney, the land on which Corpus Christi now stands and then stood. I further know (to the best of my recollection), that in 1833, Captain Villareal established a rancho where Corpus Christi now stands, under the superintendence of two Americans named Chapel and Boyse. I never knew how many leagues Captain Villareal had here, until after the Revolution, nor do I now know whether his land consisted of ten or eleven leagues.

WILLIAM O'DOCHARTY.

(*X.*)

I am acquainted with the parties to this suit. I was first in Corpus Christi, before there was any settlements made in the town tract. In 1831 or in 1832, I became acquainted with Captain Villareal. I knew him from that time until 1835. During that period, I was frequently in this part of the country. I knew that Villareal then had possession of this tract of land, and had in it a rancho, servants, and a large stock of cattle. I was at Villareal's at the time he was sending surveyors to survey the tract. I never heard his right questioned. I have never seen his title. I have no interest in the result of this suit, and am in no way related to Col. Kinney.

H. A. GILPIN.

(*Y.*)

I am not acquainted with the plaintiff, but am acquainted with the defendant. I became acquainted with Col. H. L. Kinney in 1839, in the place where is now the Town of Corpus Christi. Col. Kinney had been living in Corpus Christi for some time. He had put up some houses, cultivated some fields and a garden, and had a large amount of cattle. He has been in peaceable possession ever since, and has made large and expensive improvements, and has never been troubled in the same possession except by the Indians and the enemies of the country. Moreover, I declare, that during the last six years that Col. Kinney has been making extensive improvements on the two leagues of land, where the town tract of Corpus Christi forms a part, and that the said H. L. Kinney has * * * * * * I do not own any property in the Town of Corpus Christi, nor on the two leagues in question, and have no interest in the result of this suit.

THOS. S. PARKER.

And thereupon the defendants closed their testimony.

And thereafter the plaintiff, by way of rebutting testimony, and for the purpose of proving the assignments of the headright certifi-

cates made by them and Douglass, to Levi Jones, and to show that the patents, of which evidence had been offered by the defendants, issued by mistake, gave in evidence the following certified copies of the certificates, assignments, surveys, and receipt of land dues, that is to say.

(*Z.*)

No. 499.

This is to certify that Kelsey H. Douglass, assignee of Jose Maria Bargas, has appeared before the Board of Land Commissioners for the County of Nacogdoches, and proved, according to law, that he arrived in this Republic previous to the 2d May, A. D. eighteen hundred and thirty-five, and that he is a married man, and entitled to one league and one labor of land, upon the condition of paying at the rate of three dollars fifty cents for each labor of irrigable land, two dollars fifty cents for each labor of temporal or arable land, and one dollar and twenty cents for each labor of pasture land which is contained in the survey secured to him by the certificate. Given under our hands this first day of April, 1838.

Attest, JAMES H. STARR,
President.

Assistant Commissioner.

ADOLPHUS STERNE,
Clerk.

Be it known, that in consideration of the sum of one thousand dollars to me in hand paid, I, Kelsey H. Douglass, assignee of Jose Maria Bargas, do hereby assign and transfer the entire legal right to the within certificate to Levi Jones, and request that patents for the land to be located under it may be issued to him. Witness my hand this the sixth day of May, 1838.

K. H. DOUGLASS.

Witness,
Ro. D. JOHNSON.

Transfer.

Republic of Texas, County of Harrisburg.

Know all men by these presents, that I, Kelsey H. Douglass, assignee of Jose Maria Bargas, of the Town of Nacogdoches, and County of Nacogdoches, in the Republic aforesaid, for and in consideration of the sum of one thousand dollars to me in hand paid, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, assigned, transferred, and set over, unto Levi Jones, of the Town of Galveston, and County of Harrisburg, in the Republic aforesaid, his

heirs and assigns forever, all and singular my right, title, and interest, property, possession, claim, and demand, in and to the headright colonist's certificate number four hundred and ninety-nine (499), for one league and labor of land as issued by the Board of Land Commissioners for the County of Nacogdoches, on the first day of April, 1838, to said K. H. Douglass, assignee of J. M. Bargas, said quantity of one league and one labor of land mentioned in the said certificate, to which the said Jose Maria Bargas, the grantee in said certificate mentioned, was entitled; and I hereby, for myself, my heirs, executors, and administrators, fully guarantee to the said Levi Jones and his legal representative the validity, legality, and sufficiency of the said certificate; and do further fully guarantee to the said Levi Jones and his legal representatives the obtaining, receiving, and holding, by a good absolute and indefeasible, the said league and labor of land mentioned in the said certificate. Hereby binding myself and my legal representatives, in default of the obtaining by the said Levi Jones or his legal representatives of a good and sufficient title to said land as aforesaid, under and by virtue of the said certificate, to pay to the said Levi Jones, or his legal representatives, the full value of the said land, as the same may be ascertained by appraisement or according to the value of the land of which but for such default in reference to said certificate he or they might have obtained the title and possession, together with every and all other damages he may sustain by reason of any defects whatsoever in the said certificate.

In testimony whereof I have hereunto set my hand and seal, this sixth day of May, in the year of our Lord 1838.

K. H. DOUGLASS.

Signed, sealed, and delivered in the presence of

RO. D. JOHNSON.

State of Texas.

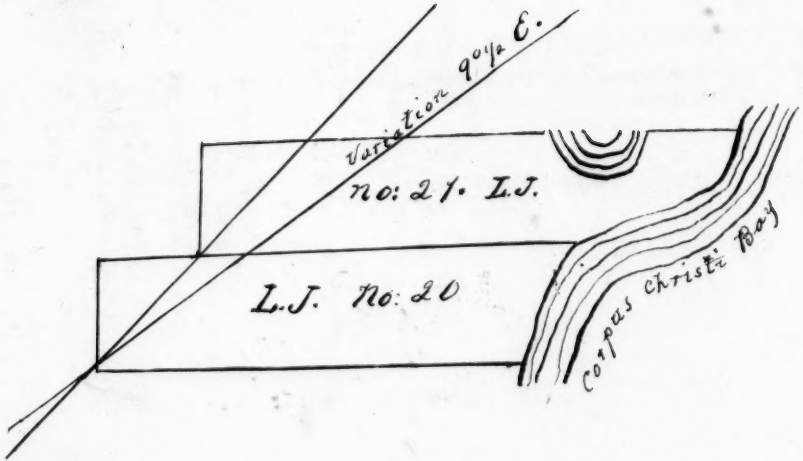
Before me, Elisha A. Rhodes, a Notary Public in and for the County of Galveston, State aforesaid, appeared Robert D. Johnson (to me known), the subscribing witness to the annexed conveyance from Kelsey H. Douglass to Levi Jones, who, being duly sworn, declared that he saw the said Kelsey H. Douglass sign and deliver the said conveyance as his act and deed. In testimony of which I hereunto subscribe my name and affix the seal of my office at Galveston, the 21st day of February, 1849.

[L. S.] E. A. RHODES,
Notary Public.

(For map, see original, page 95.)

District No. 1. Survey No. 1. West of the Nueces, and in Corpus Christi Bay, of one league.

Survey of one league of land for Levi Jones, assignee of Kelsey H.



No 100 Page [illegible]

N. L. 40.

Douglass, the assignee of Jose Maria Basquez, situated on the west side of Corpus Christi Bay, and adjoining Survey No. 20, of one league, for said Jones, being a part of the land to which he is entitled as assignee of Kelsey H. Douglass, the assignee of Jose Maria Basquez, by virtue of Certificate No. 499, issued by the Board of Land Commissioners for the County of Nacogdoches; beginning at the north corner of said Survey No. 20, at a stake and mound on the bank of the Bay; thence, with the meanderings of the same, N. 3 E. 480 varas; thence N. 14¼ W., 160 varas; thence north, 920 varas; thence N. 17¾ E., 742 varas; thence N. 26½ E., 800 varas; thence N. 33 E., 1258 varas; thence N. 26½ E., 210 varas; thence N. 9½ E., 170 varas; thence N. 63 W., 482·5 varas, to a stake and mound in the eastern point of the Oyster Reef; thence S. 45 W., 2247·6 varas; thence south, 360·3 varas; thence S. 15½ E., 115 varas; thence S. 57 W., 280 varas; thence S. 24¾ W., 310 varas; thence S. 79 W., 748 varas; thence N. 87½ W., 345 varas; thence N. 58 W., 100 varas, to a stake, from which a mosquite tree, blazed and marked J, bears S. 58 E., 100 varas; thence S. 45 W., 7870 varas, through scattering mosquit timber to a stake, from which a mosquite tree, 4 inches in diameter, bears S. 25 W., 200 varas, and another bears S. 50 W., 14 varas; thence S. 45 E., 2500 varas, through scattering mosquite timber, to a stake, from which a mosquite tree, 6 inches in diameter, bears N. 36 W., 25 varas; thence N. 45 E., 8070 varas, to the place of beginning; said league containing 5 labors of arable, and twenty labors of pasture land.

JAMES M. MANNING,
Deputy Surveyor.

ALFRED BERRY,
MATTHEW FAIRCHILD,
Chain Carriers.

SAN PATRICIO, April 15, 1838.

I, James M. Manning, do solemnly declare, under my oath of office, that the above survey was made since the first day of February last.

JAMES M. MANNING,
Deputy Surveyor.

SAN PATRICIO, April 15th, 1838.

I do certify that I have examined the above field notes, and found them correct, and the survey done according to law.

JOHN BUCHANAN,
County Surveyor.

(Attached.)

Treasury Department, Office of the Commissioner of Revenue,
Austin, December 10, 1840.

Received of Levi Jones the sum of thirty-six $\frac{56}{100}$ dollars, in the promissory notes of the Government, being the whole amount of government dues on twenty-five labors of land granted to J. M. Bar-

gas, by assignee, Levi Jones, by virtue of Certificate No. 499, issued by the Board of Land Commissioners for the County of Nacogdoches, as appears from the certificate of John P. Bendon, Commissioner General Land Office, now on file in this office.

E. LAURENCE STICKNY,
Commissioner of Revenue.

$36 50

General Land Office, Austin, April 17th, 1852.

I, S. Crosby, Commissioner of the General Land Office of the State of Texas, do hereby certify that the foregoing and within is a true and correct copy from the original on file in this office, with the erasures and interlineations.

In testimony whereof I hereunto set my hand and cause [SEAL.] the impress of the seal of said office to be affixed the day and date last written.

S. CROSBY,
Commissioner.

(A. X.)

No. 288.

This is to certify that John S. Thorn, assignee of Miguel Basquez, has appeared before the Board of Land Commissioners for the County of Nacogdoches, and proved, according to law, that the said Miguel Basquez arrived in this Republic previous to 2d May, eighteen hundred and thirty-five, and that he is a married man and entitled to one league and one labor of land, upon the condition of paying at the rate of three dollars and fifty cents for each labor of irrigable land, two dollars and fifty cents for each labor of temporal or arable land, and one dollar and twenty cents for each labor of pasture land, which may be contained in the survey secured to him by this certificate. Given under our hands, this 17th day of February, 1838.

JAS. H. STARR,
President.

WM. HART,
ADOLPHUS STERNE,
Assistant Commissioners.

Attest, K. H. MUSE,
Clerk.

(Indorsed.)

Republic of Texas, County of Nacogdoches,

I, John S. Thorn, the within assignee of Miguel Basquez, transfer and assign all the right, title, and interest which I have to the land

mentioned in this certificate to Kelsey H. Douglass, his heirs and assigns, for a valuable consideration.

J. STEPHEN THORN.

Witness:
C. M. GOULD,
S. HAGNUE.

NACOGDOCHES, April 3d, A.D. 1838.

Be it known, that in consideration of the sum of one thousand dollars, to me in hand paid, I, Kelsey H. Douglass, assignee of John S. Thorn, assignee of Leonard M. Thorn and Miguel Basquez, do hereby assign and transfer the entire legal right to the within certificate to Levi Jones, and request that the patents for the land to be located under it may be issued in his name.

Witness my hand, this the 6th day of May, 1838.

K. H. DOUGLASS.

Witness:
R. D. JOHNSON.

Republic of Texas, County of Nacogdoches.

Be it known, that on this third day of April, one thousand eight hundred and thirty-eight, and of the Independence of Texas the third, I, John S. Thorn, of the aforesaid county, for and in consideration of the sum of four hundred (400) dollars, to me in hand paid by Kelsey H. Douglass, of the same county, the receipt whereof is hereby acknowledged, have this day granted, bargained, sold, aliened, and confirmed, and passed over in full, perfect, and bona fide sale; and by these presents, do grant, bargain, sell, alien, convey and confirm, and pass over in full, perfect, and bona fide sale to the said Kelsey H. Douglass, his heirs and assigns, that tract, lot, or parcel of land, being the league and labor of land to which one Miguel Basquez was entitled, as a resident citizen of Texas, on the second March, A.D. 1836, and which I acquired jointly with Leonard M. Thorn, by a deed of sale passed the ninth day of May, A.D. 1837; and the said L. M. Thorn having released and assigned all his right to me by a deed of the same date as these presents; being the league and labor of land for which a certificate has been issued by the Board of Land Commissioners for said County, to me, as assignee of Basquez, dated February 17th, A.D. 1838, and Number 288; and I, the said John S. Thorn, agree, and bind myself to pay to the said Douglass, his heirs or assigns, the sum of four hundred dollars, with interest from this date, if the said Miguel Basquez was not legally entitled to the certificate issued as aforesaid, either for himself, or for and to me, as assignee; to have and to hold the said bargained land and premises, with all the rights, rents, issues, profits, numbers, and appurtenances thereunto being, belonging, or in any wise apper-

taining to the said Kelsey H. Douglass, his heirs and assigns, forever, in fee simple. And I, the said John S. Thorn, my heirs, executors, and administrators, the said bargained land and premises to the said Kelsey H. Douglass, his heirs, executors, administrators, and assigns, shall and will warrant and forever defend against the claim of myself, my heirs, executors, and administrators, and against the claim of all other claiming or to claim the same. And I, the said John S. Thorn, renounce and waive all laws, as well as matters of form, which might in any way impair this deed of sale.

In testimony whereof, I, the said John S. Thorn, have hereunto set my hand and affixed my seal on the date aforesaid.

J. STEPHEN THORN. [SEAL.]

Signed, sealed, and delivered in presence of
C. M. GOULD,
W. RICHARDSON,
S. HAGEMAR.

State of Texas, County of Nacogdoches.

Personally appeared before me, the undersigned authority, John Stephen Thorn, to me well known, whose name appears signed to the foregoing instrument, and acknowledged that he signed and executed the same for the purposes and considerations therein expressed.

Witness my hand and seal of office, this 1st day of March, [SEAL.] A. D. one thousand eight hundred and forty-nine.

NATHANIEL AMORY,
Notary Public, Nacogdoches County.

Republic of Texas, County of Harrisburg.

Know all men by these presents, that I, Kelsey H. Douglass, assignee of John S. Thorn, assignee of Leonard M. Thorn and Miguel Basquez, of the Town of Nacogdoches, and County of Nacogdoches, in the Republic aforesaid, for and in consideration of the sum of one thousand dollars, to me in hand paid, at or before ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, unto Levi Jones, of the Town of Galveston, and County of Harrisburg, in the Republic aforesaid, his heirs and assigns, forever, all and singular my right, title, and interest, property, possession, claim, and demand, in and to the headright colonist's certificates, number two hundred and eighty-eight (288), for one league and labor of land, as issued by the Board of Land Commissioners for the County of Nacogdoches, on the 17th day of February, 1838, to John S. Thorn, assignee of Miguel Basquez, and to all and singular the said quantity of one league and one labor of land mentioned in the said certificate, to which the said Miguel Basquez, the grantee in said certificate mentioned, was entitled, and I hereby, for myself, my heirs,

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taining to the said Kelsey H. Douglass, his heirs and assigns, forever, in fee simple. And I, the said John S. Thorn, my heirs, executors, and administrators, the said bargained land and premises to the said Kelsey H. Douglass, his heirs, executors, administrators, and assigns, shall and will warrant and forever defend against the claim of myself, my heirs, executors, and administrators, and against the claim of all other claiming or to claim the same. And I, the said John S. Thorn, renounce and waive all laws, as well as matters of form, which might in any way impair this deed of sale.

In testimony whereof, I, the said John S. Thorn, have hereunto set my hand and affixed my seal on the date aforesaid.

J. STEPHEN THORN. [SEAL.]

Signed, sealed, and delivered in presence of
C. M. GOULD,
W. RICHARDSON,
S. HAGEMAR.

State of Texas, County of Nacogdoches.

Personally appeared before me, the undersigned authority, John Stephen Thorn, to me well known, whose name appears signed to the foregoing instrument, and acknowledged that he signed and executed the same for the purposes and considerations therein expressed.

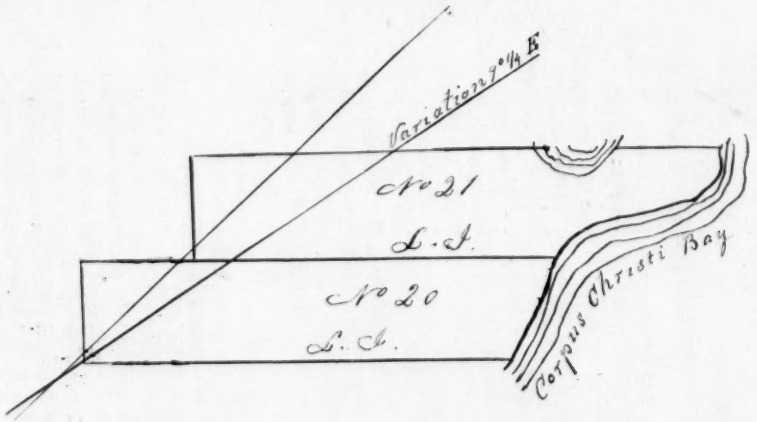
Witness my hand and seal of office, this 1st day of March, [SEAL.] A. D. one thousand eight hundred and forty-nine.

NATHANIEL AMORY,
Notary Public, Nacogdoches County.

Republic of Texas, County of Harrisburg.

Know all men by these presents, that I, Kelsey H. Douglass, assignee of John S. Thorn, assignee of Leonard M. Thorn and Miguel Basquez, of the Town of Nacogdoches, and County of Nacogdoches, in the Republic aforesaid, for and in consideration of the sum of one thousand dollars, to me in hand paid, at or before ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, unto Levi Jones, of the Town of Galveston, and County of Harrisburg, in the Republic aforesaid, his heirs and assigns, forever, all and singular my right, title, and interest, property, possession, claim, and demand, in and to the headright colonist's certificates, number two hundred and eighty-eight (288), for one league and labor of land, as issued by the Board of Land Commissioners for the County of Nacogdoches, on the 17th day of February, 1838, to John S. Thorn, assignee of Miguel Basquez, and to all and singular the said quantity of one league and one labor of land mentioned in the said certificate, to which the said Miguel Basquez, the grantee in said certificate mentioned, was entitled, and I hereby, for myself, my heirs,

Folio 105



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executors, and administrators, fully guarantee to the said Levi Jones, and his legal representatives, the validity, legality, and sufficiency of the said certificate, and do further fully guarantee to the said Levi Jones, and his legal representatives, the obtaining, receiving, and holding by a good, absolute, and indefeasible title, the said league and labor of land mentioned in the said certificate. Hereby binding myself and my legal representatives, in default of the obtaining by the said Levi Jones, or his legal representatives, of a good and sufficient title to the land as aforesaid, under and by virtue of the said certificate, to pay to the said Levi Jones, or his legal representatives, the full value of the said land, as the same may be ascertained by appraisement, or according to the value of the land of which, but for such default in reference to said certificate, he or they might have obtained the title and possession, together with any and all other damages he may sustain by reason of any defects whatsoever in the said certificate.

In testimony whereof, I have hereunto set my hand and seal, this sixth day of May, in the year of our Lord 1838.

K. H. DOUGLASS.

Signed, sealed, and delivered in presence of

RO. D. JOHNSON.

(Attached.)

State of Texas.

Before me, Elisha A. Rhodes, a Notary Public in and for the County of Galveston, State aforesaid, appeared Robert D. Johnson, to me known, the subscribing witness to the annexed conveyance from Kelsey H. Douglass to Levi Jones, who being duly sworn, declared that he saw the said Kelsey H. Douglass sign and deliver the said conveyance as his act and deed.

In testimony of which I hereunto subscribe my name, and affix the seal of my office, at Galveston, the 21st day of February, A. D. 1849.

[SEAL.] E. H. RHODES.
Notary Public.

(For map, see original, page 106.)

District No. 1, Survey No. 20, west of the Nueces, and on Corpus Christi Bay, of one league of land.

Survey of one league of land for Levi Jones, assignee of Kelsey H. Douglass, assignee of John S. Thorn, the assignee of Leonard M. Thorn and Miguel Basquez, situated on the west side of Corpus Christi Bay, adjoining Survey No. 19, of one-third of a league of land, for Nathan H. Watrous, being a part of the quantity of land to which said Jones is entitled as assignee of Kelsey H. Douglass, assignee of John S. Thorn, the assignee of Leonard M. Thorn and

Miguel Basquez, by virtue of Certificate No. 288, issued by the Board of Land Commissioners for the County of Nacogdoches.

Beginning at a stake and mound on the north corner of said Survey No. 19, on bank of the Bay; thence with the meanderings of the same N. 36 W., 500 varas; thence N. 24 W., 300 varas; thence N. 19 W., 500 varas; thence N. 11½ W., 425 varas; thence N. 5½ W., 509 varas; thence N. 16 W., 599 varas, to a stake and mound on the bank of the Bay; thence S. 45 W., 10,550 varas, through scattering mosquite timber, to a stake, from which a mosquite tree, 8 inches in diameter, bears S. 25° W., 9 varas, and another, 4 inches in diameter, bears S. 60 E., 24 varas, thence S. 45 E., 2500 varas, through scattering mosquite timber, to a stake and mound; thence N. 45 E., 9536 varas, through scattering mosquite timber, to the place of beginning; said league containing 4 labors of arable, and 21 labors of pastoral land.

JAMES M. MANNING,
Deputy Surveyor.

ALFRED BERRY,,
MATTHEW FAIRCHILDS,
SAN PATRICIO, April 14th, 1838.

TREASURY DEPARTMENT,
OFFICE OF THE COMMISSIONER OF REVENUE, 9th December, 1840.

Received of Levi Jones the sum of thirty-five 20-100 dollars, in the promissory notes, being the amount of dues upon twenty-five labors of land granted to Miguel Basquez, by virtue of Certificate No. 288, issued by the Board of Land Commissioners for Nacogdoches County, as appears from the certificate of John P. Borden, Commissioner General Land Office.

E. LAWRENCE STICKNEY,
Commissioner of Revenue.

I, James M. Manning, do solemnly declare, under the oath of my office, that the within survey was made since the first day of February last.

JAMES M. MANNING,
SAN PATRICIO, April 14th, 1838. Deputy Surveyor.

I do certify that I have examined the within field notes, and find them correct, and the survey done according to law.

JOHN BUCHANAN,
County Surveyor, S. P. County.

GENERAL LAND OFFICE, AUSTIN, April 15th, 1852.

I, S. Crosby, Commissioner of the General Land Office of the State of Texas, do hereby certify that the foregoing and within is a true and correct copy from the originals on file in this office, with the erasures and interlineations.

In testimony whereof, I hereunto set my hand, and cause
[SEAL.] the impress of the seal of said office to be affixed, the day and date above written.

S. CROSBY,
Commissioner.

And the plaintiff further gave in evidence a certified copy of a letter from J. J. H. Grammont, to the Commissioner of the General Land Office, having first proved that the said Grammont was County Surveyor of San Patricio County, at the date of said letter, and the successor in office of John Buchanan. The copy aforesaid is as follows:

(*B. V.*)

VICTORIA, 2d December, 1839.

JOHN P. BORDEN, Esq.,
Commissioner General Land Office.

SIR: I have been enabled, by surveys lately returned, to make a correct, or pretty nearly correct, map of the County of San Patricio, of which I forward you a sketch. The surveys made in the County of San Patricio having been connected with those made in Goliad County, on the west side of the San Antonio River, near the mouth of the Cibolo, I have been able to ascertain the course and distance of the boundary line, between Bexar and San Patricio, from a point 30 miles up the Rio Frio to the mouth of the Cibolo, as it appears on this map; but not having the course and distances from the mouth of the Cibolo to the Town of Goliad, I have not been able to lay on the present map the probable boundary lines between San Patricio, Goliad, and Refugio.

I received information from the County Surveyor of Refugio that, having completed the surveys on the coast of the Gulf of Mexico, he was ready to run the boundary line of the ten border leagues, which observation makes me believe that there will be no further difficulty about the boundary lines, should even Congress not fix it, although it is desirable that it should do it, to remove all occasion of dispute between the localities in either of these counties.

Sir, your resp., &c.,
J. J. H. GRAMMONT,
County Surveyor, County San Patricio.

GENERAL LAND OFFICE, AUSTIN, May 18th, 1849.

I, George W. Smyth, Commissioner of the General Land Office, do certify that the foregoing is a correct copy of the original on file in this office.

In testimony whereof, I hereunto set my hand and
[SEAL.] affix the seal of said office, on the day and date above written.

GEO. W. SMYTH,
Commissioner.

And the plaintiff further read in evidence the depositions of Jose M. J. Carabajal, E. D. Smith, J. T. Case, J. O. Wheeler, John R. Tully, James W. Byrne, Patrick Shelly, and D. Hailey, with the papers thereto attached, as follows:

(*C. V.*)

I have been in the vicinity of the Rio Grande since 1838, with the exception of portions of 1840 and 1841. In 1838 I settled in Soto La Maria; in 1839 I came to Camargo, and took part in the Revolution, and have been there most of the time since. I think in the fall of 1842 or '3, I settled permanently in Camargo; I have been occasionally absent.

I was acquainted with Enrique Villarreal; I became acquainted with him in 1838; I have seen some of his soldiers, and heard them speak of him as their commander; I have heard him called Captain in his presence; he was recognized and spoken of as Captain, and no one in Matamoras doubted or denied the fact to my knowledge; I do not know that Villarreal was ever engaged in any fight in the war between Mexico and Texas.

Villarreal resided, when I saw him, in Matamoras, he had his family there; I do not know at what time he died; after the battle of Resaca, I was not in Matamoras until after his death; I heard he was dead, but I do not now remember if I ever knew when he died.

Cross-examined by Judge Hughes.

The boundary line between Texas and Tamaulipas, prior to the Texan Revolution, was the Nueces River, from its mouth to the crossing of the road leading from Lando to San Antonio, in Texas, from this point. I always understood that the line dividing Tamaulipas and Coahuila ran in a southwesterly direction to a point in the Rio Grande known as the Palo Fox, an old town between Lando and Presidio.

JOSE M. J. CARVAJAL.

(*D. D.*)

I have resided on the Rio Grande thirteen years; I was on the Rio Grande from 1831 to 1834; I was acquainted with Enrique Villarreal; I know he held the rank of Captain in the Mexican Army in 1840, '41, and '42, and think he did so in 1843 and 1844, but am not sure; he had a family living in Matamoras at the times I have mentioned; I am under the impression that he died some time in the fall of 1844 or in 1845, and but a short time previous to the war between the United States and Mexico.

E. D. SMITH.

(*E. E.*)

I am acquainted with H. L. Kinney, the defendant in this case; I saw him in Victoria, in March, 1840; the next time I saw Col. Kinney was at Live Oak Point, in Refugio County, in the latter part of April, or the fore part of May, in the year 1840; he was then living and had a store at Live Oak; I went with him at that time from Live Oak to Corpus Christi, where he had a house built partly in logs and partly in the ground; he had no merchandise in the house, and told me he met parties of Mexicans there, for the purpose of trading to them the goods he had at Live Oak, from whence he took them to the house at Corpus Christi, as he did not consider it safe to keep the goods there. And further, this deponent saith not.

J. O. WHEELER.

(*F. F.*)

I am acquainted with Henry L. Kinney, the defendant in this suit. I lived in the County of Refugio in the years 1838 and 1839 at the Town of Aransas, on Aransas Bay; I left the Town of Aransas about the 23d or 24th of November, 1839, at which time the said H. L. Kinney was a resident of that place; I think he first came to that town in December, 1838, or in January or February, 1839. He was a voter at the election for member of Congress. And further this deponent saith not.

JOEL T. CASE.

(*G. G.*)

That he is a resident citizen of the County of Refugio, State of Texas, and has resided in said county since the month of May, 1839. When he first became a citizen of said county, to wit, on the 18th day of May, 1839, he first became acquainted with Henry L. Kinney, the defendant in this suit, who was then living at Live Oak Point, in said county; that said Kinney continued to reside in said county during that year. That in the month of October, during all or about all of said month, he, witness, was at or about the place where the present Town of Corpus Christi is situated, surveying; that said Kinney then resided at Live Oak Point, in the County of Refugio aforesaid. That late in fall of 1839, said Kinney established a rancho at or near McGlom's Bluff, in said County of Refugio, or trading post, as he, witness, understood, and commanded a trade with the Mexicans at said Corpus Christi.

JOHN R. TULLY.

(*H. H.*)

That he is a citizen of the County of Refugio, State of Texas, and has resided in said county since March, 1839. That he is acquainted

with Henry L. Kinney, the defendant. Knows that said Kinney was a resident citizen of said County of Refugio during the year of 1839; and that he knows that said Kinney lived first at Live Oak Point, in said county. Witness knows that said Kinney was residing at Corpus Christi in the County then San Patricio (and now of Nueces), in said State, in the summer of the year 1840, as he was at said Kinney's house in said Corpus Christi. Witness further states, that said Kinney was a resident citizen of the County of Refugio in and during the year 1839; and that said Kinney claimed his residence in said County of Refugio, and voted at the general election under the Republican Government of Texas, in the month of September, 1839.

(*I. I.*)

That he is the clerk of the County Court of the County of Refugio, State of Texas, and has charge of all the papers, books, and records of said county. That among the papers on file in his office is the election returns from the precinct at Aransas, in said County of Refugio, of an election held on the 7th day of September, 1840, at which election it appears that Col. Henry Kinney voted; a copy of said election returns is hereunto annexed.

PATRICK SHEELY.

The State of Texas, County of Refugio.

Transcript of election returns in the County of Refugio, said State. The following is a true and perfect copy of election returns from the precinct of Aransas, in said county, to wit: List of votes received at Aransas on the seventh day of September, 1840, for one Senator, Representative, and County Surveyor,

1. Jesus de la Garcia.
2. Joseph E. Plummer.
3. William Byrne.
4. James Gurley.
5. Michael Cahill.
6. Gabriel Gambias.
7. Reba T. Cenera.
8. Pablo Trarenia.
9. E. Fitzgerald.
10. Gideon R. Jacques.
11. Martin Power.
12. Joseph F. Smith.
13. William O. Scott.
14. Thomas H. Wood.
15. John Armstrong.
16. Charles Smith.
17. James W. Byrne.
18. Richard Power.
19. Archibald McRae.
20. H. L. Kinney.

We, the Clerks of the election, duly appointed to assist in holding an election at Aransas, on the 7th day of September, 1840, do certify that the above is a correct return of the votes received in said election, amounting to twenty votes.

W. McDANIEL,
Clerk.
GIDEON R. JACQUES,
Clerk.

Senator.	Representative.	County Surveyor.
James W. Byrne.	Willard Richardson.	John R. Tully.

(See original, page 118.)

James C. Allen.	Thomas Thatcher.	Jas. B. Collingsworth.

(See original, page 118.)

From the above return it will appear that for Senator for the District composed of the Counties of Refugio, San Patricio, and Goliad,

James W. Byrne received fifteen votes, . . . 15
James C. Allen received five votes, ... 5

For Representatives of Refugio County.

William Richardson received fourteen votes, . . 14
Thomas Thatcher received four votes, ... 4

For County Surveyor of Refugio County.

John R. Tully received thirteen votes, . . . 13
James B. Collingsworth received six votes, . . . 6

We do hereby certify, that the above canvass of the votes taken at Aransas for Senator, Representative, and County Surveyor for Refugio, is correct and just. Given under our hands, this 7th day of September, 1840, and of the Texian Independence the fifth.

JNO. ARMSTRONG,
Superintendent.

THOMAS H. WOOD,
JOS. E. PLUMMER,
MARTIN PENER,
} Assistant Judges.

(*K. K.*)

The State of Texas, County of Nueces.

Civil proceedings in the District Court of said County.

Be it remembered that on the thirteenth day of April, A. D. 1849, Levi Jones filed in the Clerk's Office of the said Court, the following petition, to wit.

Filed April 30th, 1849.

EPH. M. HARRIS.
Deputy Clerk, District Court, Nueces County.

Service issued, May 10th, 1849, to Mann.

The State of Texas, County of Nueces.

To the Honorable M. P. Morton, Judge of the Fourth Judicial District. The petition of Levi Jones, a resident of the County of

Galveston, in the State of Texas, complaining against Henry L. Kinney, Edward Ohler and Matilda Ohler his wife, John Smith, William Mann and Esther Mann his wife, Hiram Riggs, Enrique de la Lauza, J. Benton Johnson, Elizabeth Rogers, Conrad Morley, Ephraim M. Harris, Frederick Belden, John J. F. Gravis, Harrison W. Burney, George Noessel, George Hennings, Charles Blackwell, Orris C. Rice, Charles G. Bryant, Nathaniel Chambliss, Thomas Parker and Rachel Parker his wife, Sarah Pettigrew, James M. Manning, Michael McMahon and Margaret McMahon his wife, Matthew Dunn, Cornelius Cahill, John P. Kelsey, William Davis, John Stewart, Bivian Brooker, Margaret Carothers, and Richard Power, who are residents of the County of Nueces aforesaid, respectfully showeth unto your Honor, that heretofore, to wit, on the fifteenth day of April, 1849, your possession of a certain tract or parcel of land, of which he was the lawful and rightful owner in fee simple, containing one league, lying and being in the said County of Nueces, which was granted to your petitioner, assignee of Miguel Basquez, by patent from the Government of the State of Texas, on the tenth day of April, one thousand eight hundred and forty-nine, and situated and described as follows, known as Survey No. 20, on the west side of the Nueces, or Corpus Christi Bay, by virtue of Headright Certificate No. 288, issued to Miguel Basquez, by the Board of Land Commissioners of Nacogdoches County, on the 17th day of February, 1838, and transferred to Levi Jones, on the 6th day of May, 1838. Beginning at the north corner of Nathan H. Watrous, third of a league, Survey No. 19, a stake and mound on the bank of the bay; thence with the meanders of the bay north 36° west, five hundred varas; north 24° west, three hundred varas; north 19° west, five hundred varas; north 11½° west, four hundred and twenty-five varas; north 5½° west, five hundred and nine varas; north 16° west, five hundred and ninety-nine varas, to a stake and mound for corner; thence south 45° west, ten thousand five hundred and fifty varas, to a stake, from which a mosquite bears south 25° west, nine varas, another bears south 60° east, twenty-four varas; thence south 45° east, twenty-five hundred varas, to a stake and mound; thence north 45° east, nine thousand five hundred and thirty-six varas, to the place of beginning. And your petitioner further says, that afterwards, to wit, on the fifteenth day of April, one thousand eight hundred and forty-nine, your petitioner being so in the ownership and possession of the said tract of land herein described, the said defendants, with force and arms, entered thereupon, and dispossessed and ejected your petitioner from the same, and took possession thereof, and have ever since continued and remained in the said possession, and refused to return the same to your petitioner, although often requested so to do, all of which your petitioner alleges is to his damage, $50,000. Your petitioner further says, that he brings this suit for the establishment and quieting of his title, and recovery of the premises of, from, and

against said defendants, who so in manner and form as aforesaid, forcibly dispossessed your petitioner and detains from him the said premises. Wherefore your petitioner prays that this his complaint may be heard in due course of law, and that he have judgment of your Honorable Court, that he recover the said premises, and the process thereof to restore him to the possession of the same, and that his title to the said league of land may be established and quieted against the said defendants, and for damages to the amount of ten thousand dollars, for the wrong and injury done your petitioner, and the unlawful detention of said land. Your petitioner prays for all other and further relief to which he is in law or equity entitled, and which to your Honor may seem meet.

(Signed) W. P. BALINGER,
Attorney for Petitioner.

Afterwards, the following proceedings were had in said court, to wit.

Be it remembered, that on Monday, the seventeenth day of September, in the year of our Lord one thousand eight hundred and forty-nine, that being the sixth Monday after the first Monday in August of the same year, there was begun and holden a District Court, in and for this State and County. Which court having been opened in accordance with the requirements of law, the following officers were found to be present. Hon. N. P. Norton, Judge of the Fourth Judicial District; Thomas Tatum, Clerk, by E. M. Harris, Deputy; W. L. Rogers, Sheriff, by J. Benton Johnson, Deputy. The court having called the docket, and no parties appearing for trial, it is ordered that this court do now adjourn until to-morrow morning, 9 o'clock.

Tuesday morning, September 18th, 1849. Court met pursuant to adjournment; present as yesterday.

After divers orders, none of which relate to this cause, it was ordered that the Court do now adjourn until to-morrow morning, 9 o'clock.

Wednesday morning, 9 o'clock, September 19th, 1849. Court met pursuant to adjournment; present as yesterday, also C. W. Peterson, District Attorney.

After divers orders, none of which relate to this cause, it is ordered that this Court do now adjourn until to-morrow morning at 9 o'clock.

Thursday, September 20, 1849. Court met pursuant to adjournment; present as yesterday.

After divers orders, none of which relate to this cause, it is ordered that this Court adjourn until to-morrow morning, nine o'clock.

Friday, September 21, 1849. Court met pursuant to adjournment; present as yesterday.

Whereupon divers orders were made, and judgments, &c., were entered, and among those was the following, to wit:

Action for the Recovery of Land.

Nonsuit taken by the plaintiff.

LEVI JONES
v.
HENRY L. KINNEY et als. } No. 40.

It is therefore ordered, adjudged, and decreed by the Court, that defendants go hence discharged, and that plaintiff pay all costs in this behalf expended.

After divers other orders, none of which related to this cause, it is now ordered that this Court do adjourn until to-morrow morning, 9 o'clock.

Saturday, September 22, 1849. Court met pursuant to adjournment; present as yesterday.

After divers orders, &c., none of which relate to this cause, the following order of adjournment was entered upon the minutes of the Court, to wit:

Whereupon, the minutes having been read, examined, and approved, it is ordered that this Court do now stand adjourned without day.

(Signed) M. P. NORTON,
Judge District Court, Fourth Judicial District.

THOMAS TATUM,
Clerk.

By E. M. HARRIS,
Deputy Clerk.

The State of Texas, County of Nueces.

I, W. D. Hailey, Clerk of the District Court of said County, do hereby certify that this and the foregoing and annexed four sheets contain a full and complete transcript of the papers and orders, judgments, decrees, &c., of the said District Court, in the said cause of Levi Jones against Henry L. Kinney and others named in the petition, as copied in this transcript, and that no other suit between said parties ever has been commenced between said parties, ever has been commenced in said district, as appears of record in my office.

In testimony, I, W. D. Hailey, Clerk of the District Court of Nueces County aforesaid, do hereunto sign my name, [SEAL.] and affix the seal of the said District Court, at the District Court Clerk's office, in the City of Corpus Christi, on this 7th day of February, A. D. 1854.

W. D. HAILEY,
Clerk District Court, Nueces County.

(W. D. H.)

I, W. J. Howerton, Commissioner named in the foregoing deposition of W. D. Hailey, do hereby certify that this is the transcript mentioned and referred in said deposition by the said Hailey, and that he testified to the same as being a true and perfect record, &c.

W. J. HOWERTON,

U. S. Commissioner District Court United States, District Texas.

That he is the Clerk of the District Court of Nueces County, State of Texas, and the custodian of all the records, books, and papers of or belonging to said Court. That the annexed transcript of the record of a case which was once pending in said Court, wherein Levi Jones was plaintiff, and Henry L. Kinney and others were defendants, is a complete, true, and perfect transcript and record of all and every of the proceedings had in said case. The said annexed transcript is duly certified to by him, said witness, of date 7th February, 1854, and marked on the back thereof (W. D. H.), and is upon four sheets of paper, and wafered and sealed together. Further witness saith not.

W. D. HAILEY.

And the plaintiff further proved that Matamoras was a town or city of Mexico, on the west side of the Rio Grande, and now and since 1824 included in the State of Tamaulipas, and thereupon closed his testimony. And the testimony on both sides having been closed, the plaintiff, by his counsel, moved the Court to exclude from the jury the papers in Spanish, given in evidence by the defendants, one being the contract of 1840, and the other the pretended notarial act of 1842, for the reasons before assigned, and because they are shown to have been contracts or bargains made by a citizen of the Republic of Texas, with an alien enemy domiciliated in the enemy's country, and because they are not competent to show either title or color of title. But the Court overruled the said motion, and refused to exclude the said papers, to which ruling of the Court the plaintiff, by his counsel, excepted, and tendered this his second bill of exceptions, which he prayed may be signed, sealed, and made part of the record in this cause. And the same is now done accordingly.

JOHN C. WATROUS. [SEAL.]

J. TEMPLE DOSWELL
v.
ENRIQUE DE LA LAUZA et als. } No. 234.

Be it further remembered, that after the evidence stated in the two foregoing bills of exception had been given to the jury, the plaintiff, by his counsel, asked the Court to instruct the jury as follows:

(*N. N.*)

District Court of the United States, District of Texas.

J. TEMPLE DOSWELL
v.
ENRIQUE DE LA LAUZA et als.

The counsel for the plaintiff requests the Court to instruct the jury as follows:

1. That the patents issued to Levi Jones, on the 10th day of April, 1849, and the conveyance from said Jones to the plaintiff, introduced in evidence, vest in the plaintiff a title to the land described in the patents, unless a better or paramount title has been shown.

2. That in determining whether the patents of 1849 are void or not, the jury will take into consideration all the circumstances as disclosed by the testimony, and if they are satisfied that there is no person, except Levi Jones or the plaintiff, claiming any interest under a right to the original certificates or surveys, and that at the time when the patents of 1845, referred to in the testimony, issued, Levi Jones was the only person interested therein, and that these patents were cancelled, and those of 1849 issued by his consent, and that of the Commissioner under the advice of the Attorney-General, they will not consider the patents of 1849 as illegal or void on that account.

3. That in case the patents of 1849 are void, still, if at the time the patents of 1845 were issued, Levi Jones was the legal owner and assignee of the certificates, on which the surveys were made, and the patents of 1845 were issued, then the right, title, and interest, conveyed by the patents of 1845, vested in and enured to the benefit of said Jones, and he thereby became the legal owner of such title, and could convey it to the plaintiff.

4. That the assignments indorsed on the original certificates, and which have been proved in this case, are competent and sufficient to make Levi Jones the owner and assignee of such certificates under the preceding instruction.

5. That the recital on the surveys, made on the certificates referred to, that they were made for Levi Jones, assignee of certain persons, is competent *prima facie* evidence of the assignments, as stated, to said Jones.

6. That surveys made by the Deputy Surveyor of San Patricio County, on the 14th and 15th days of April, 1838, and afterwards at some time not fixed by testimony, approved by the County Surveyor of said County, in which patents have issued, must be regarded as legal and competent surveys, and made by the proper surveyor.

7. That the defences of the defendants, apart from their attack on the plaintiff's title, consist first, in their offer to prove, by length of possession coupled with other circumstances, a paramount title;

second, in a plea of the bar of the right of entry of the plaintiff; third, in two pleas of possession for three years, under color of title. In order to sustain the first defence, it is necessary for the defendants to prove, to the satisfaction of the jury, that the possession of the land in question, has been, during the whole period required by law, and stated in a subsequent instruction, continuous and uninterrupted; adverse to the true owner; and accompanied by a claim of right. The jury will take into consideration all the circumstances; the state of the country; its scanty population; the existence of hostilities, and the like; and if they can reasonably account for the undisturbed possession, which may be proved in such a way as not to imply that the possession was held adversely to the true owner, the state, or an individual, as the case may be; they will not regard such possession. And if, on the whole testimony, the jury are left with a reasonable doubt as to the length and adverse character of the possession, they will not regard this defence, for it must be clearly made out.

8. That if the land of which possession, as above stated, may be proved, was vacant land, belonging, for a part of the time, to the Republic of Texas, and if the possession claimed is proved to have been held during such time by the servants or tenants of an alien enemy to the Republic, who resided on the west side of the Rio Grande, in Mexico, during which time the Republic of Texas and Mexico were at war, then the jury will not take into consideration the time of the duration of such war—that is, from the 19th of December, 1836, to February, 1848—in finding the length of time of possession, for, during war, presumptions drawn from length of possession do not arise in favor of an alien enemy domiciliated in the enemy's country.

9. That any interruption, whether actual, by voluntary removal, or by operation of law, is occasioned in the possession, before the full period is completed, then the previous time of possession is not to be considered at all, but the possessor must begin again.

10. That if the jury are satisfied that Enrique Villareal was not in possession of the land in question for a sufficient time before his death, to give him a right by presumption, and if he died in 1845 an alien enemy to the Republic of Texas, and left only alien heirs, then any inceptive or complete title to land within the Republic, which he might have gained before his death, escheated immediately to the Republic of Texas, and such escheat was an interruption of operation by law, in the possession, and the jury will not then regard the previous possession.

11. That if the jury find the facts to be as stated in the previous instruction, then any title to land gained or held by Villareal, at the time of his death, in 1845, would pass to the Republic, and would also pass from the Republic and State by patents subsequently issued, and if patents were subsequently issued for a part of such land to

Levi Jones, then, under the facts supposed, the title of Villareal would be passed to and vested in said Jones.

12. That if the jury believe from the evidence that Villareal left the possession of the land in question, some time in the year 1839, and that Kinney, claiming under him, did not go into the uninterrupted, continuous possession of the land, until the spring or summer of 1840, then there was a break or interruption in the possession so as to prevent Kinney from connecting his possession with that of Villareal, and in that case the subsequent possession of Kinney would not be long enough to entitle the jury to presume a grant or title.

13. That in order to enable Kinney to connect his possession with that of Villareal, so as to make out of both possession a period long enough to raise the presumption of a grant, it must be shown that there was a legal and competent transfer of title by conveyance improper from Villareal to Kinney; and for this purpose the instruments introduced in evidence by the defendants, as contracts between Villareal and Kinney, one dated January 4th, 1840, the other dated July 16th, 1842, are not competent, because the first is a mere agreement to sell at a subsequent time, and the second is not under seal; and if the jury is satisfied that these contracts were made with an alien enemy residing in the hostile country, they will disregard them, for this reason also, as not being competent to transfer title or possession.

14. That the period during which possession must have been held under the former agreement, and by principles of Spanish law, in order to give a presumptive right to land, against the Government, was forty years; the period during which possession must have been held, according to law, is twenty years before suit.

15. That in estimating the effect of the time of possession passed before the Act of Limitations, which went into effect on the 17th of March, 1841, the rule is to take a proportionate part of that time in the ratio of the former period required for perfect prescription to the present period, required for the same purpose under our present laws; and to add such proportionate part to the actual time elapsed since the act aforesaid went into effect.

16. That if the plaintiff's grantor, Jones, had only a location and survey on headright certificates, on the land in question before 1841, then Jones had no right of action, or cause of action, before the passage of the Act of Limitations, and the plea of the bar of the right of entry cannot be sustained.

17. In order to sustain the pleas of three years' possession under color of title, the defendants must first satisfy the jury that a grant of the land has been made by the sovereigns of the soil; that is, either by Spain, the State of Tamaulipas, the Republic or the State of Texas, to some one, under whom possession has been held for three years after such grant; and if the grant is presumed from

sufficient length or time of possession, then the party holding under it, in order to be entitled to the defence of the three years' limitation, must show an additional possession of three years more.

18. In order to sustain the pleas of three years' possession under color of title, the defendants must connect themselves with the person or persons holding possession under color of title, and must show a privity with them; that is to say, the defendants must show that they themselves have a chain of transfer from or under the sovereignty of the soil; and in this case, if there is no deed or transfer from Villareal to Kinney to the present defendants, they cannot set up this defence.

19. That the description of the land set forth in the Act of Sale from Villareal to Kinney, of 1842, as then sold to the latter, is one league, or twenty-five million of square varas, bounded on the north by lagunas of salt water, on the east on the same manner, "and" it is distant more than seven leagues from the coast of the sea, in the lands of the department "of Tamaulipas," on the right margin of lagunas into which the Nueces empties, and in lands belonging to Villareal; and if from this description, taken in connection with the natural objects referred to, the jury cannot ascertain with certainty the position and boundaries of the league of land mentioned, or if they find that several tracts of land might be marked out, each of them would answer this description, and it is uncertain which of these is meant, they will not regard the act of sale from Villareal to Kinney at all; and in making this attempt to ascertain the boundaries of the league, the jury will not consider it as a principle of law, that the north and east boundary-line should be of equal length.

20. That if the jury think, from the evidence, that there is no conflict, or only a partial conflict, between the land claimed by the plaintiff, and that claimed by Kinney under the Act of Sale of 1842, and if they are satisfied that the plaintiff's title is a good one, and that the defendants have not shown a better title, but only a defence under the three years' limitation, then they will find for the plaintiff as to so much of the land as is not in conflict, stating what part it is.

21. That if the jury are satisfied by the evidence that there was an elder grant or title to the land in dispute, made previous to the surveys and patents under which the plaintiff claims, and so made by a former government, as by Spain or Tamaulipas, and if they are not satisfied, also, that this grant or title was delineated on the County map, or recorded in the proper County, or filed in the General Land Office before the land was surveyed under headright certificates, then the surveys and patents in such certificates will be the superior and better title, unless the jury are satisfied, from the evidence, that the holder or owner of the certificates, who had them surveyed for him, had notice, at or before such survey, of the Spanish or Mexican title, and of the position of the land granted by such title.

ALLEN & HALE,
Attorneys for Plaintiffs.

But the Court refused to give each and all of such instructions, and went on to instruct the jury as follows: that is to say, "that the plaintiff must recover on the strength of his own title—not on the weakness of his adversary's; that if the surveys on which the patents which have been given in evidence in this cause issued, were void when made, the plaintiff can claim no title to the land under such patents; that if the surveys were made west of the Nueces River, or Corpus Christi Bay, prior to the twenty-fourth day of May, 1838, by the Deputy Surveyor of San Patricio County, they were void, because San Patricio County did not at that time extend west of the River Nueces; and the approval of the County Surveyor, Buchanan, even if given after the twenty-fourth day of May, 1838, relates back in point of time to the date of the survey by his deputy, and does not have the effect of making good the surveys, if at the time when they were made by the Deputy Surveyor they were out of the limits of the County; that if Villareal had acquired a title to the land, under the governments of Spain or Mexico, before his death, and if he died an alien enemy to the Republic of Texas in 1845, having only alien enemies as his heirs, still his title to the land in controversy did not escheat to the Republic, and consequently could not pass by the subsequent patents issued by the Republic or State; that as these instructions are sufficient for the decision of the case, the Court declines to proceed further, and to give the instructions asked by the plaintiff, and also to each clause in the charge or instructions actually given by the Court to the jury, as above stated, except the first clause, to wit: that the plaintiff must recover on the strength of his own title; the plaintiff by his counsel, specially and at the time excepted, and tendered this his third bill of exceptions, which he prayed may be signed, dated, and made part of the record of this cause, and the same is now done accordingly.

JOHN C. WATROUS. [SEAL.]

Feb. 9, 1856.

And afterwards, to wit, on the 18th day of February of the same year, the Court here made an order in this cause, which is as follows, to wit:

Order.

J. TEMPLE DOSWELL
v.
ENRIQUE DE LA LAUZA et als. } 234.

This day came the parties by their attorneys, and the plaintiff by his attorney, having called to the notice of the Court an error which has occurred in entering the verdict and the judgment of the Court in this cause, and the Court being aware that the verdict and judgment have been entered as if rendered on Wednesday, the 6th day of February, 1856, when in fact the verdict and judgment were ren-

dered on Saturday, the 9th day of February, 1856: It is ordered now that this error be by this order, and the same is hereby corrected, and the entry heretofore made as of the said 6th day of February, shall be considered as if made, and is hereby made, as of the 9th day of February, 1856.

And afterwards, to wit, on the same day and year, the Court here made an order in this cause, which is in the words and of the tenor following, to wit:

Order.

J. TEMPLE DOSWELL
v.
ENRIQUE DE LA LAUZA et als. } 234.

This day came the parties by their attorneys, and the motion of the plaintiff for a new trial having been heard, because it seems to the Court that there is no ground for the said motion, it is ordered that the same be overruled. Thereupon the said plaintiff prayed a Writ of Error to the Supreme Court of the United States, to cause the judgment and proceedings herein to be revised, which writ might act as a supersedeas herein, and the said plaintiff accordingly tendered a bond in a proper amount, which was approved and filed, and his Writ of Error was therefore allowed.

And afterwards, to wit, on the 18th day of February, in the year of our Lord one thousand eight hundred and fifty-six, the plaintiff, by his counsel, took out a Writ of Error to the Supreme Court of the United States, which is as follows, to wit:

United States of America, *ss.*

The President of the United States to the Honorable the Judge of the District Court of the United States, for the District of Texas, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said District Court before you, between J. Temple Doswell as plaintiff, and Enrique de la Lauza, Frederick Belden, James M. Manning, Richard Power, John T. J. Mercette, Festus Doyle, J. Benton Johnson, Conrad Menley, Harrison A. Berry, George Noessel, Charles Blackwell, Orris C. Rice, Nathaniel Chambliss, Thomas Parker, Sarah Pettigrew, Michael McMahan, Mathew Dunn, Cornelius Cahill, John B. Kelsey, Margaret Carothers, Louis N. Drier, Matias Battischiender, Sylvester Brown, Henry Redmond, Edward Ohler, M. P. Norton, and Thisbe Kenney, administratrix and widow of J. Warren Kenney, deceased, Bryant, administratrix and widow, and Charles C. Bryant, heirs of Charles G. Bryant, deceased, Swift, administratrix and widow of T. J. Swift, deceased, J. E. Gravis, ad-

ministratrix and widow F. J. Gravis, and E—— Mann, administratrix and widow of William Mann, deceased, as defendants. A manifest error hath happened, to the great damage of the said J. Temple Doswell, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness, the Honorable Roger B. Tawney, Chief Justice of the said Supreme Court, this eighteenth day of February, in the year of our Lord one thousand eight hundred and fifty-six.

[SEAL.] JAMES LOVE,
Clerk of the District Court of the United States for the District of Texas.

Allowed by

JOHN C. WATROUS,
Judge of the District Court of the United States for the District of Texas.

And afterwards, to wit, in the same day and year, the plaintiff, by counsel, filed his bond for costs in this appeal, which is as follows, to wit:

Bond.

Know all men by these presents, that we, J. Temple Doswell, of the State of Louisiana, and Levi Jones and Fletcher S. Stockdale, of the State of Texas, are held and firmly bound unto Enrique de la Lauza, Frederick Belden, James M. Manning, Richard Power, John F. J. Mercette, Festus Doyle, J. Benton Johnson, Conrad Menly, Harrison A. Berry, George Noessel, Charles Blackwell, Orris C. Rice, Nathaniel Chambliss, Thomas Parker, Sarah Pettigrew, Michael McMahan, Mathew Dunn, Cornelius Cahill, John P. Kelsey, Margaret Carothers, Louis N. Drier, Mattias Battischiender, Sylvester Brown, Henry Redmond, Edward Ohler, M. P. Norton, and Thisbe Kenney, administratrix and widow of J. Warren Kenney, deceased, —— Bryant, administratrix and widow of Charles C. Bryant, heir of Charles G. Bryant, deceased; —— Swift, administratrix and widow of F. J. Swift, deceased; J. E. Gravis, administratrix and widow of John F. J. Gravis, deceased; and E—— Mann, administratrix and widow of William Mann, deceased, in the full

and just sum of three hundred dollars, to be paid to the said Enrique de la Lauza, Frederick Belden, James M. Manning, Richard Power, John F. J. Mercette, Festus Doyle, J. Benton Johnson, Conrad Menley, Harrison A. Berry, George Noessel, Charles Blackwell, Orris C. Rice, Nathaniel Chambliss, Thomas Parker, Sarah Pettigrew, Michael McMahan, Mathew Dunn, Cornelius Cahill, John P. Kelsey, Margaret Carothers, Louis N. Drier, Mattias Battischiender, Sylvester Brown, Henry Redmond, Edward Ohler, M. P. Norton, and Thisbe Kenney, administratrix and widow of J. Warren Kenney, deceased, —— Bryant, administratrix and widow and Charles C. Bryant, heir of Charles G. Bryant, deceased, —— Swift, administratrix and widow of F. J. Swift, deceased, J. E. Gravis, administratrix and widow of John F. J. Gravis, deceased, and E—— Mann, administratrix and widow of William Mann, deceased, their certain attorney, executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals, and dated this eighteenth day of February, in the year of our Lord one thousand eight hundred and fifty-six.

Whereas lately, at a term of the District Court of the United States for the District of Texas, in a suit depending in said Court between the said J. Temple Doswell, plaintiff, and Enrique de la Lauza, Frederick Belden, James M. Manning, Richard Power, John F. J. Mercette, Festus Doyle, J. Benton Johnson, Conrad Menley, Harrison A. Berry, George Noessel, Charles Blackwell, Orris C. Rice, Nathaniel Chambliss, Thomas Parker, Sarah Pettigrew, Michael McMahan, Matthew Dunn, Cornelius Cahill, John P. Kelsey, Margaret Carothers, Louis N. Drier, Matias Battischiender, Sylvester Brown, Henry Redmond, Edward Ohler, M. P. Norton, and Thisbe Kenney, administratrix and widow of J. Warren Kenney, deceased, —— Bryant, administratrix and widow, and Charles C. Bryant, heir of Charles G. Bryant, deceased, —— Swift, administratrix and widow of F. J. Swift, deceased, J. E. Gravis, administratrix and widow of John F. J. Gravis, deceased, and E. Mann, administratrix and widow of William Mann, deceased, judgment was rendered against the said J. Temple Doswell; and the said J. Temple Doswell having obtained a writ of error, and filed a copy thereof in the Clerk's office of the said Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Enrique de la Lauza, Frederic Belden, James M. Manning, Richard Power, John F. J. Mercette, Festus Doyle, J. Benton Johnson, Conrad Menley, Harrison W. Berry, George Noessel, Charles Blackwell, Orris C. Rice, Nathaniel Chambliss, Thomas Parker, Sarah Pettigrew, Michael McMahon, Mathew Dunn, Cornelius Cahill, John P. Kelsey, Margaret Carothers, Louis N. Drier, Matias Battischiender, Sylvester Brown, Henry Redmond, Edward Ohler, M. P. Norton, and Thisbe Kenney, administratrix and widow of J. Warren Kenney,

deceased, —— Bryant, administratrix and widow, and Charles C. Bryant, heir of Charles G. Bryant, deceased, —— Swift, administratrix and widow of F. J. Swift, deceased, J. E. Gravis, administratrix and widow of John F. J. Gravis, deceased, and E. Mann, administratrix and widow of William Mann, deceased, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now, the condition of the above obligation is such, that if the said J. Temple Doswell shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

The word "widow" interlined before signing.

J. TEMPLE DOSWELL. [L. S.]

By his agent and attorney in fact, Levi Jones.

LEVI JONES. [L. S.]

FLETCHER STOCKDALE. [L. S.]

Approved.

JOHN C. WATROUS.

The United States of America, United States District Court, District of Texas, at Galveston, to wit.

I, James Love, Clerk of the District Court of the United States for the District of Texas, certify that the foregoing one hundred and fifty-one pages, exclusive of the index and this certificate, are a true and correct transcript of the record and all the proceedings had in the case of J. Temple Doswell against Enrique de la Lauza et als., numbered 234 on the law docket of said court.

In testimony whereof, I hereunto set my hand and affix the seal of said court. Done at the City of Galveston, this [SEAL.] fifteenth day of March, A. D. 1856, and the eightieth year of the Independence of the United States of America.

JAMES LOVE.
Clerk.

United States of America, *ss.*

The President of the United States, to the Honorable, the Judge of the District Court of the United States for the District of Texas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, between J. Temple Doswell, as plaintiff, and Enrique de la Lauza, Frederick Belden, James M. Manning, Richard Power, John F. J. Iercette, Festus Doyl, J. Benton Johnson, Conrad Menley, Harrison

W. Berry, George Noessel, Charles Blackwell, Orris C. Rice, Nathaniel Chambliss, Thomas Parker, Sarah Pettigrew, Michael McMahon, Mathew Dunn, Cornelius Cahill, John P. Kelsey, Margaret Carothers, Louis N. Drier, Matias Battischiender, Sylvester Brown, Henry Redmond, Edward Ohler, M. P. Norton, and Thisbe Kenney, administratrix and widow of J. Warren Kenney, deceased, —— Bryant, administratrix and widow, and Charles C. Bryant, heir of Charles G. Bryant, deceased, —— Swift, administratrix and widow of F. J. Swift, deceased, J. E. Gravis, administratrix and widow of John F. J. Gravis, deceased, and E—— Mann, administratrix and widow of William Mann, deceased, as defendants, a manifest error hath happened, to the great damage of the said J. Temple Doswell, as by his complaint appears.

We being willing that error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the 1st Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this eighteenth day of February, in the year of our Lord one thousand eight hundred and fifty-six.

JAMES LOVE, [SEAL.]
Clerk of the District Court of the United States,
for the District of Texas.

Allowed by

JOHN C. WATROUS,
Judge of the District Court of the United States
for the District of Texas.

The United States of America to Enrique de la Lauza, Frederick Belden, James M. Manning, Richard Power, John F. Mercette, Festus Doyle, J. Benton Johnson, Conrad Menley, Harrison W. Berry, George Noessel, Charles Blackwell, Orris C. Rice, Nathaniel Chambliss, Thomas Parker, Sarah Pettigrew, Michael McMahon, Mathew Dunn, Cornelius Cahill, John P. Kelsey, Margaret Carothers, Louis N. Drier, Matias Battischiender, Sylvester Brown, Henry Redmond, Edward Ohler, M. P. Norton, and Thisbe Kenney, administratrix and widow of J. Warren Kenney, deceased, —— Bryant, administratrix and widow, and Charles C. Bryant, heir of Charles G. Bryant, deceased, —— Swift, administratrix and widow

of F. J. Swift, deceased, J. E. Gravis, administratrix and widow of John F. J. Gravis, deceased, and E—— Mann, administratrix and widow of William Mann, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error, a copy whereof is filed in the Clerk's Office of the District Court of the United States for the District of Texas, wherein J. Temple Doswell is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. John C. Watrous, Judge of the District Court of the United States for the District of Texas, this eighteenth of February, in the year of our Lord one thousand eight hundred and fifty-six.

JOHN C. WATROUS.

On this fourteenth day of March, in the year of our Lord one thousand eight hundred and fifty-six, personally appeared J. A. H. Cleveland, United States Deputy Marshal for the District of Texas, before me, the subscriber, John S. Jones, United States Commissioner for the District of Texas, and makes oath, that on the 14th day of March, 1856, he delivered a true copy of the within citation to Robert Hughes, Esquire, the attorney of record of the defendants named in the said citation.

J. A. H. CLEVELAND,
United States Deputy Marshal.

Subscribed and sworn before me the day and date above written.

JOHN S. JONES,
United States Commissioner, District Texas.

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Assignment of Errors.

IN THE SUPREME COURT OF THE UNITED STATES AT WASHINGTON, DECEMBER TERM, 1856.

R. T. DOSWELL
v.
ENRIQUE DE LA LANZA et al.

In error to the District Court of Texas.

And now, in this court, comes R. T. Doswell, plaintiff in error, by his attorney, and says, that in the record of the judgment and proceedings in this cause in the district court of the United States for the district of Texas, manifest error appears in the following particulars:

First. That the district court erred in sustaining the third and fifth pleas contained in the amended answer of the defendants, and in overruling the demurrer of the plaintiff thereto.

Second. That the district court erred in its ruling as to the admission of testimony, as stated and shown in the first bill of exceptions taken by the plaintiff.

Third. That the district court erred in its ruling as to the admission of testimony, and on the motion to exclude testimony, as stated and shown in the second bill of exceptions taken by the plaintiff.

Fourth. That the district court erred in refusing to give the instructions to the jury which were asked by the plaintiff, and in giving certain other instructions to the jury, as stated and shown in the third bill of exceptions taken by the plaintiff.

Fifth. That the district court erred in refusing to grant a new trial upon the motion made by the plaintiff.

Sixth. That the district court erred in rendering the judgment.

Wherefore, and for many other errors apparent on the record of the proceedings in the said cause, the plaintiff in error prays that the said proceedings and the judgment thereon may be reviewed, and the said judgment reversed, with such order thereon as this court may direct.

W. G. HALE,
for Plaintiff in Error.